

COUNCIL MEETING

NOVEMBER 28, 2012

The Council Meeting of the Council of the County of Kaua'i was called to order by the Council Chair at the Council Chambers, 4396 Rice Street, Room 201, Līhu'e, Kaua'i, on Wednesday, November 28, 2012 at 9:23 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum
Honorable Dickie Chang
Honorable KipuKai Kualii
Honorable Nadine K. Nakamura
Honorable Mel Rapozo
Honorable JoAnn A. Yukimura
Honorable Jay Furfaro

APPROVAL OF AGENDA.

Mr. Rapozo moved for approval of the agenda as circulated, seconded by Ms Nakamura, and unanimously carried.

Chair Furfaro: Now for the consent calendar, is there anyone that wants to speak on the consent calendar, which is a single item today? No. Is there anybody who wishes to speak on any item that is on the agenda today? You may come up and I will restate the rules. If you are coming to speak on an item now, you will only be given three (3) minutes. There will not be any feedback from the Councilmembers and your testimony will be recorded as such. Okay. So this is a time-saving item for anyone who wants to speak now on the consent calendar or any item. I request that you state your name and the item that you would like to address, and I will start the three (3) minutes.

There being no objections, the rules were suspended to take public testimony.

RAYMOND CATANIA: My name is Raymond Catania, and I live in Puhi, and I am a volunteer caretaker along with James Alalem, Gilbert Kahale and other of the Wailua heiau, and I am speaking about the Wailua Beach Bike Path. I am adamantly opposed to it. I think it is really the wrong thing, a bad thing that the Mayor is trying to do. This is a very sacred area, the area where the first Polynesians who came to Hawai'i. They landed, and they developed the culture on this island from this spot. It is also an area that our ancestors were also buried in the sands. Eventually, when their bodies disintegrate, they go back to the sea where they came. This is a very sacred place. It is connected to the moana nui, big ocean that we live in. For local people, many local people, Native Hawaiians, this area is one that we are going to fight for to protect. The other thing is that I think that the County should be more concerned about the rising ocean levels that is taking place, and the erosion that is happening around the shoreline. I have two (2) photographs over here that I could pass to you that was taken in June of this year of the erosion that is happening. I remember a few years back, there was a meeting that the Mayor had called on the bike path, and most of the people that had spoken out at that public hearing were against the bike path. The guy who was giving the presentation, the Planner, was saying that the bike path, certain areas reminded him of Monterey, California. Well, this is not Monterey, California. This is Hawai'i.

If newcomers come to Hawai'i, they got to understand the culture that already exists here. People should stop transporting their ideas of what they think is Paradise to Hawai'i. So anyway, one more point that I would like to make is that the County shoreline setback is forty (40) feet. The proposed bike path is less than twelve (12) to fifteen (15) from the highway. That surely has to be taken into consideration, especially with the erosion. The other thing that I wanted to mention is that there were a group of us this past Monday, that put up yellow ribbons on the trees fronting the highway to show which trees are going to get knocked down and which trees, once they go, would help with the erosion. Mahalo.

Chair Furfaro: Thank you very much. Anyone else that wishes to speak at this time? Mr. Punua, you have the floor.

WALLACE PUNUA: My name is Wallace Punua, born and raised in Wailua, Kaua'i. I am a very active user of Wailua Beach. I am very familiar with the historic history as well as the history of the beach itself. My family enjoyed the beach. I have enjoyed it all my life, fifty (50) years. I am very active in the ocean. I have seen the beach erode, and I have seen no help as far as moving sand to recreate the beach, as had been done in Mākaha. I remember in earlier years we would see Louie Ragel, or whoever it was that would be helping with the sand with the river. Right now there is way too much sand under the bridge, and I do not see any coordination between the Federal government, State, and County as far as moving sand back to save the beach. That is one thing. The second thing is the parking lot at Seashell, they currently have a big culvert that was installed that is actually below the grade of the sand, which means they will have to trench a ditch to the reef there. I am really concerned as to what is going to be coming out of that drain. That is a very huge drain. My concern is it is probably either going to be oil and gas coming off of the highway, or it is going to be a sewage overflow that is going to be damaging the reef there, and it is going to be destroying that end of the beach.

Last, but not least, I really feel that if the bike path is that important, which it is. The bike path itself is important, but the location of it is poor. I feel that they should not build anything on the sand. The sand there is natural. People come here to Hawai'i to see nature. Once you put concrete on it, that is permanent. Those trees are all part of nature. You cannot reverse nature by putting concrete on it. There has to be some type of compromise. The two (2) compromises I would share, is one (1), with the existing concrete and roadway, either move the eleven (11) foot path inwards towards the mountain, either partially onto the highway or reduce the size of the bike path so it is not eleven (11) feet. It may have to be four (4) feet or three (3) feet where people would need to come to Wailua and walk their bikes across, because it is a limited area. So either that, or move the entire road eight (8) feet towards the right. As far as building anything on the sand, the beach is way too eroded. Thank you.

Chair Furfaro: Thank you, Mr. Punua. Is there anyone that wants to speak now for three (3) minutes with no Q&A with the Council, raise your hand. Again, I will reiterate you will not be allowed to come back a second time.

MARIO PEREZ: My name is Mario Perez, a Kaua'i resident for over forty (40) years. I am opposed to the bike path in its present location that it is being proposed. I think we know what happens when you put concrete close to eroding sand. I think that was done in 'Aliomanu. We know what happened to the

Lemke property. I was concerned that we had an incident where we had to remove one of the comfort stations that were not set back. So once we put the bike path in, are we going to have to remove that? And who is going to be responsible for that? I am just opposed to the bike path in that present location.

Chair Furfaro: I want to make clear, you are opposed to the bike path in that present location?

Mr. Perez: Yes. If it was behind Coco Palms, I do not know if that has been proposed or not, but I think it has been. Thank you.

Chair Furfaro: Thank you very much. I saw a second or a third hand go up. Anyone else who wishes to speak now?

KEVIN ARNOLD: My name is Kevin Arnold, representing Poīpū Kai Association and the Resolution for the no-parking between the Hyatt and Pe'e Road. I wanted to make sure everybody received the correspondence I sent out. JoAnn, thank you so much for your response. I have printed copies, if I could distribute those.

Chair Furfaro: You can give them to the staff.

Mr. Arnold: I did send them to everyone.

Chair Furfaro: It is a very sensitive matter. I will not count your time. When you email us all together on an item, and we all start responding to you, it is questionable if decisions are being made, and that then becomes a violation of the Sunshine Law.

Mr. Arnold: Absolutely.

Chair Furfaro: We were very pleased that Councilmember Yukimura took the initiative to respond to you.

Mr. Arnold: Thank you.

Chair Furfaro: You can continue with your testimony.

Mr. Arnold: Okay. I am a little confused. We are a little confused as to what the protocol is or what the process is. It was delayed for two (2) weeks and appears again on the agenda today, and yet we hear from the Engineering Department that they are responding on the 30th of November. Does anybody know exactly what the status is?

Chair Furfaro: Well, unless they are going to a different staff meeting than I am going to, they have the wrong date. That is all I can say to you. I think they were implying that they wanted to respond to the Committee. Now, this is a violation of our rules to start dialog. So I will leave it at that.

Mr. Arnold: In my letter, I referred to a ticket or slip of paper that the Hyatt puts on windshields for those people that are parking on the shoulder of the Poīpū Road and requesting that they park further down the road adjacent to Poīpū Kai or the Bayview Subdivision. What I have, is copies of those slips and an attached photograph of my vehicle parked on the shoulder receiving

the ticket. My purpose in speaking today is simply to distribute these materials and to acknowledge that I have responded to our meeting two (2) weeks ago, addressing some of the, I think, deficiencies in information that had been discussed during that meeting.

Chair Furfaro: I was just delivered a request from the Engineering Department. I will read the last paragraph: "we therefore request a deferral of the item from this week's Council Meeting agenda until we can complete our research. Thank you for your consideration and please contact me as it relates to a specific rescheduling."

Mr. Arnold: Perfect. Thank you.

Chair Furfaro: Thank you very much. Is there anyone else that is here that would like to speak on any item on the agenda for up to three (3) minutes? We will start the clock when you introduce yourself.

LIBERTA HUDDY ALBAO: Good morning, my name is Liberta Huddy Albao. I am the Vice President of Queen Deborah Kapule Hawaiian Civic Club. Today, I am giving testimony about the Wailua Bike Path, which is a significant area, and the impact is very great because of the cultural significance of that area. Many times I have gone to the public meetings, and I have stated, "why does it have to be a continuous path?" I have never gotten an answer from anyone. Today I am here to say that the erosion is so great in this area, we should look at another area that we can continue the path. Maybe the *mauka* side fronting Coco Palms? I think it is not good times. Knowing it was going to be on the Council's agenda today, after church on Sunday, I parked my car at Aloha Beach Parking Lot, and I decided to walk across the bridge. It was magnificently beautiful. I could see two hundred (200) years ago when our *ali'i* lived there. It was just majestic. So when I was on the bridge, I noticed the white line going from the traffic light along to Seashell Restaurant. The cars were speeding by, the impact of the traffic. If you do not do it right, somebody is going to be hurt. I saw these big trucks and a lot of cars speeding and swerving beyond the white line when you have the rock wall. So that is another reason to take a look at it, you know. Is that the right place? Is it too small? I know that we need to come to an understanding where it is going to be, and that is why I am here today to testify. I am not against it. I am for this bike path, but it is the location along the corridor of Wailua Beach. Thank you.

Chair Furfaro: Thank you, Liberta. Mr. Perreira, Charles.

CHARLES PERREIRA: For the record, I am Charles Perreira. I am very concerned. I started fishing from the time I was seven (7), and I am eighty-three (83) right now. Our beach access, we are losing one at a time. At one time they had a meeting with Ronald (inaudible) about three (3) or four (4) of them that named all the beach access and what happens? Nothing. I did not hear a damn thing about it. Then at one time where Auntie Loke went down, about the Pāpa'a Bay, I was on that too. Half of that road belongs to the County, somebody...I am not going to mention them, like you said, about selling it and somebody wanted to keep it. But anyway, something was stolen about that, but four (4) people got arrested. But if you went down to 'Aliomanu, there is a lot of beach access there that people have blocked off for us to get to that beach. They put driveway. Stuff like that is happening. How are the fishermen going to get to that beach. Sometimes you have a cooler and other things you want to take down, but you cannot get close to the beach from the road. From the road, you have to walk all the

way down to the beach. So anyway, I am very concerned about this beach access, and I hope something happens where we can keep this beach access. Aloha.

Chair Furfaro: Thank you, Uncle Charlie. Okay. Not seeing anyone else, members, I am looking for a motion.

OPU KALEIOHI: My name is Opu Kaleiohi. I am speaking about Wailua Beach. Back in the years when Louie Gonzales was head of the Recreation, I was a lifeguard there for three (3) seasons, three (3) summers. That beach was our beach. We do not want any cement on that beach. We have got sand there. Walk on the sand. What is wrong with that? I was there when Frank Sinatra almost drowned there. We got him out of water. I mean I hate to see that beach go down like it is, but what are you going to do? Last night in the papers, they had where they got...Jay was putting...where he was saying they were going to take out all of these trees. I know most places that they put trees in to block the water to let it grow. So why put those things there, because they claim that beach has burials and everything. So why do it? That was our beach. Tourist used to come and talk to us. Divers came there. We had all kind of people that would come there. I never had boats, but I had friends who had boats and would take them out to dive. We had all of these kids from, I do not know if they were just from Texas or all over the State – they were at Kapa'a School and used to come to that beach. So the school wanted us to talk to them about the swimming and everything. So to me, I think that beach, leave it as it is. It is our beach. It is everybody's beach. So why cover it up with cement? I thank you.

Chair Furfaro: Thank you, Mr. Kaleiohi. Felicia, did you want to speak now, because you will not be allowed to speak again as the morning goes along. You can get your three (3) minutes now by our rules, or you can wait until this comes up as the second item on the agenda.

FELICIA COWDEN: I am being asked by somebody who wants to testify on the phone.

Chair Furfaro: I am sorry, the reality of this rule was put in the last two (2) years, it is for those who have to attend and have to depart. Okay. Very good. Members, I would like to call the meeting back to order. I would like to get an approval on receiving the consent calendar.

There being no one else to give testimony, the meeting was back to order, and proceeded as follows:

CONSENT CALENDAR:

C 2012-442 Communication (11/02/2012) from the Mayor, transmitting for Council consideration and confirmation, Mayoral appointee Harold Brown to the Fire Commission – term ending 12/31/2014: Mr. Kualifi moved to receive C 2012-442 for the record, seconded by Mr. Chang, and unanimously carried.

MINUTES of the following meetings of the Council:

November 9, 2012 Special Council Meeting
November 14, 2012 Public Hearing Re: Bill No. 2451, Bill No. 2452,
and Bill No. 2453
November 15, 2012 Special Council Meeting

Mr. Rapozo moved to approve the Minutes as circulated, seconded by Mr. Chang, and unanimously carried.

COMMUNICATIONS:

C 2012-443 Communication (11/15/2012) from Councilmember Kualii transmitting for Council consideration, a Resolution to support Malama Pono's efforts to eliminate Hepatitis B on Kaua'i through the "Hepatitis B Elimination Project" and to provide agenda time for DQ Jackson, Executive Director, Malama Pono Health Services, and Dr. Jimmy Yoon to provide a briefing on the "Hepatitis B Elimination Project".

Chair Furfaro: On that note, I would like to suspend the rules and ask D.Q. Jackson and Dr. Yoon to come up.

There being no objections, the rules were suspended.

Chair Furfaro: Aloha, good morning.

D.Q. JACKSON, Malama Pono Executive Director: Aloha, County Councilmembers. I am D.Q. Jackson, Executive Director, Malama Pono Health Services. Next to me is Dr. Jimmy Yoon, the Board President of Malama Pono. Our mission is to stop the spread of HIV/AIDS, viral hepatitis and sexually-transmitted diseases on Kaua'i through education. Malama Pono was formed in 1986 in response to the AIDS emergency here on Kaua'i. December 1st is World AIDS Day, and we recognize that day in order to remember the more than three hundred (300) people who have died from AIDS on Kaua'i. We celebrate the significant progress that has been taken with that disease, taking it from a death sentence to a manageable, albeit dangerous disease. Malama Pono has brought the AIDS transmission rate to the lowest levels in the history of the AIDS epidemic, and to the lowest level in the State of Hawai'i. But with no vaccine and no cure, we continue very vigorous prevention measures. Chlamydia is the most common sexually-transmitted disease on Kaua'i and in Hawai'i, and we have been able to reduce the Chlamydia rate by twenty percent (20%) this year. The other islands show no such reduction.

The most common cause of liver cancer and liver failure on Kaua'i is Hepatitis B. Hawai'i has the highest rate of liver cancer in the United States. Hepatitis B is incurable, but treatable. The Hepatitis B vaccination is highly effective for decades. Malama Pono's Board of Directors and staff is determined to eliminate Hepatitis B as a transmissible disease from the island of Kaua'i. This project will take about three (3) years, and we anticipate spending about four hundred thousand dollars (\$400,000.00). The cost of a single case of liver cancer is very high, beginning at least at one hundred thousand dollars (\$100,000.00) for a transplant and continuing up from there.

This project seeks to prevent scores of cases of liver cancer. Savings in health care dollars will be in the multimillions, but that pales in comparison to the saving in human suffering. This is an education project, nursing education, physician education, and most importantly, community education. The major effort is community education. We need to educate all community members as to risk factors for Hepatitis B, to screen all at-risk persons on Kaua'i, and to link those persons with chronic Hepatitis B infection to care. Then we need to vaccinate all uninfected people at-risk. We are here today to ask your moral support for this

project. We ask you to use your high standing in the community to encourage at-risk persons to be screened and to be vaccinated.

JAMES YOON, Doctor: Thank you very much, ladies and gentlemen, for having us. The numbers are really quite staggering. Just to give you an idea, worldwide conservative estimates are about four hundred million (400,000,000) people worldwide who are chronically infected. That is more than five percent (5%) of the entire world population. Here in the United States, we estimate at least two (2) million people are infected, and a lot of these people are unaware of their infection. Unfortunately, it is a silent killer. You do not get sick or feel sick or have symptoms until it is virtually too late. By our best estimates, best based on CDC and Department of Health records and data available, we estimate that there are approximately one thousand (1,000) people here on Kaua'i alone who are infected chronically with Hepatitis B. Tragically, what I see is a lot of people who are doing the screening are OB/GYNs, and a lot of patients who I am seeing in my Office are young pregnant women, who are newly infected because they were not screened, they were not vaccinated, and unfortunately were infected often by sexual transmission.

Most of our population, the immigrant population represents a large part of those patients, who were infected at birth. The only thing they had ever done was they were born in an endemic area. Asia and parts of South East Asia and African are some of the biggest areas of infection, where the infection rates may be as high as eight percent (8%) of the entire population. These numbers, as they suggest, are staggering. It is a silent epidemic, and there are a lot of misunderstandings that we need to clarify with education. In this day and age, it is not just about medically helping and improving the lives of patients and our families, but cost-effectiveness is very important. As D.Q. ran some numbers, it has certainly been proven to be cost-effective to treat Hepatitis B. There is very effective treatment today. Screening Hepatitis C, I have brought together here four (4) relatively easy-to-read articles to read that summarize the cost benefits of screening Hepatitis B. If anybody is interested in looking at these, I will be happy to distribute them. We recognized a couple of years ago at a board retreat that this was the single largest infectious disease issue on this island, and we made a commitment to tackle this head-on. Thank you.

Chair Furfaro: Doctor, let me ask you a question. The treatment to vaccinate individuals against Hepatitis B, this is that series of three (3) shots?

Dr. Yoon: That is correct. Currently, if you are born in the United States, mothers are screened prior to delivery, and babies are vaccinated as part of their normal routine vaccinations recommended by the Department of Health.

Chair Furfaro: For an individual that would initiate a series of these injections, there is a dollar cost to that? Do you roughly know what that is?

Dr. Yoon: I do not have the precise number, precise cost, but I could certainly provide that information.

Chair Furfaro: Please do.

Dr. Yoon: It probably in the neighborhood of a couple hundred dollars for the whole vaccination series, and it is something that is covered by most health insurance, including HMSA.

Chair Furfaro: So it is covered by multiple insurance companies? Is that what I am hearing?

Dr. Yoon: That is correct, sir. It is unfortunately a little bit of a game today with insurance companies. Coding and billing is really the name of the game. So there are ways to play the game in an effective way. In most instances, it should be covered. It is recommended by the Department of Health and the CDC.

Chair Furfaro: D.Q., anything that you want to add to that?

Mr. Jackson: Ultimately, Malama Pono is the vaccinator of final ability if someone is totally without insurance, without resources, Malama Pono will provide the vaccination series for anyone who is present at no cost to them.

Chair Furfaro: Thank you. Thank you for that feedback and thank you for that effort. Mr. Kualii, this was your communication. I will give you the floor.

Mr. Kualii: Thank you, Mr. Chair. *Aloha* and *mahalo* to both of you, D.Q. and Dr. Yoon, and thank you for your work and thank you for being here and thank you, D.Q., for bringing this to my attention and allowing me to put this forward as a Resolution on my last day here. I did have one quick question, because in the Resolution, it says to encourage all Kaua'i residents who think that they might be at-risk for Hepatitis B to be tested. So can you tell the people out there who they are. Is it everyone?

Mr. Jackson: A lot of them tend to be friends of mine. These are people who are either born in countries where the disease is endemic or the children of people born in those countries. So for us here on Kaua'i, that would be people from the Philippines, or from the Pacific Islands, Tonga, Samoa, where it is endemic. What we would encourage is if someone is born in that area, to be screened. It is a simple test to be screened. If it turns out that they are chronically infected, we want to make sure that they are linked to care so that the about one-third of them who seem to be destined to run into serious, life-threatening problems can be followed by their physicians and hopefully to avoid those situations before they get out of hand. Then to vaccinate anyone around them, other family members, who are not yet vaccinated. So for most people on Kaua'i, who are twenty (20) years or younger, that has automatically been done. It is for older people than that, who have not had the opportunity. The vaccine only came along twenty (20) years ago. So those people who are at-risk tend to be from Southeast Asia, the Pacific Islands, or are children of those people or intimate partners of those people. So we seek to help them find their status so that they can avoid subsequent, serious, life-threatening situations. Did I answer your question?

Mr. Kualii: Yes, thank you. The numbers are pretty staggering, and I think the real caution here is how you have explained it. It is basically a silent killer because people do not find out until perhaps they are

already so sick with cancer. So the real necessity here is for people to get vaccinated.

Dr. Yoon: Unfortunately, there are common misconceptions as well. A lot of population we are speaking of, back in their home country, they had very good relationships and trusting relationships with their physicians, and unfortunately they have been told for years, okay, if you live a healthy lifestyle and avoid alcohol, you are going to be fine. We know today that is not the case. A quarter of these patients will die prematurely.

Mr. Kualii:

Thank you both so much.

Chair Furfaro: D.Q., I would like to read the Resolution and then see if there is any more testimony. I will take that moment to have the Resolution read by the Clerk's Office. May I have that Resolution read and so note the Resolution number.

RICKY WATANABE, Court Clerk: We are on page 4, Resolution No. 2012-60, Resolution to Support Malama Pono's Efforts to Eliminate Hepatitis B on Kaua'i, Through the Hepatitis B Elimination Project. I shall read the Resolution. "Whereas, Hepatitis B is defined as irritation and swelling (inflammation) of the liver due to infection with the Hepatitis B virus (HBV); and whereas, the liver is such an important organ that the human body can only survive one or two days if the liver were to shut down; and whereas, Hepatitis B is transmitted through blood and infected bodily fluids, which can occur through direct blood-to-blood contact, unprotected sex, use of unsterile needles, and from an infected mother to her newborn during delivery; and whereas, Hepatitis B is the most common cause of liver cancer and Hawai'i has the highest rate of liver cancer in the nation; and whereas, the financial burden for liver failure and liver cancer in terms of health care costs, suffering and reduced quality of life is significant on Kaua'i; and whereas, the State of Hawai'i Department of Health reports that more than forty thousand (40,000) people living in Hawai'i are infected with Hepatitis B and approximately 950 infected are Kaua'i residents; and whereas, nearly two-thirds (2/3) of persons infected with Hepatitis B may be unaware that they are infected; and whereas, Hepatitis B preventative vaccinations and treatment is available to all residents on Kaua'i; and whereas, Malama Pono Health Services, its Board of Directors, and staff's mission is to eliminate Hepatitis B incidents from Kaua'i; and whereas, Malama Pono offers a free, confidential testing for Kaua'i residents through their "Hepatitis B Elimination Project"; now, therefore, be it resolved by the Council of the County of Kaua'i, State of Hawai'i, offers its support to Malama Pono Health Services for its effort to eliminate Hepatitis B through its "Hepatitis B Elimination Project" and encourages all Kaua'i residents who think they may be at risk for Hepatitis B to be tested. Be it further resolved, that all Kaua'i residents are encouraged to become educated about Hepatitis B and schedule an appointment for vaccination for themselves and their family members. Be it finally resolved, that a copy of this Resolution be forwarded to Malama Pono Health Services. Introduced by Councilmember Kipukai Kualii."

Chair Furfaro: Members, I do want to say for our next agenda item, we only have the Planning Director for one (1) hour, and he is going to do his presentation first. So I have read the Resolution, so if we decided to support it, we can do it while these individuals are present. Do you have any questions of these individuals? Vice Chair Yukimura.

Ms. Yukimura: Yes, thank you, Chair. Thank you very much, D.Q. and Dr. Yoon. First of all, to Malama Pono, thank you for your remarkable achievement in the area of reducing AIDS and Chlamydia. Thank you also for taking on this very bold and noble mission of eliminating Hepatitis B. So my question is that you said that liver cancer costs one hundred thousand dollars (\$100,000.00) for transplants and goes up from there? So if a person gets liver cancer, then the minimum cost is a transplant? If you do not have a transplant, then it is an ongoing cost that can go beyond one hundred thousand dollars (\$100,000.00), is that what you are saying?

Mr. Jackson: Your description is exactly correct. When I talked to you about HIV/AIDS, we know very well that the lifetime cost of treatment for someone infected with HIV is three hundred seventy-four thousand dollars (\$374,000.00). Those are figures from the Centers for Disease Control. I wish they would do the same thing for liver cancer, but liver cancer is different, and every person responds differently to it. Some are dead within two (2) weeks of finding this out. Others have the opportunity, possibly, for a liver transplant, which is rare in Hawai'i. You know people have to go to the mainland for that. The expense of that can begin at one hundred thousand dollars (\$100,000.00). Then for the medications every year thereafter runs fifty thousand dollars (\$50,000.00) or so. So each case is different. Some people are very lucky and might have relatively small amount of surgery to solve their problem. So it is hard to say the exact amount of money, but I think all of you intuitively know this is a miserable disease that is very, very expensive in terms of both health care dollars and the human suffering involved. I cannot give you an exact number because each case is different.

Ms. Yukimura: Okay. Thank you. So if you can get this prevention, it is a hundred dollars (\$100.00) per shot for three (3) shots approximately?

Mr. Jackson: There are times we can get it for less than that through special exchanges, yes, we can.

Ms. Yukimura: Right. The other prevention that happens is apparently the prevention that happens with children that are born?

Mr. Jackson: Correct.

Ms. Yukimura: So the transmission is likely to happen or there are ways to prevent the transmission of the disease at birth, is that right?

Mr. Jackson: Absolutely. Let me tell you, if you want to see physicians at their finest, watch the pedestrians and OB/GYNS when a baby is born at Wilcox to an infected mother. Talk about going into heavy-duty action. They will do everything to protect that baby, including vaccination on the spot, anything to prevent transmission of that virus to the baby because if it is transmitted to the baby, because they have an immature immune system, they will most likely, ninety percent (90%) of them, become chronically infected.

Ms. Yukimura: So really this community education, so that people know to get screened.

Mr. Jackson: Yes.

Ms. Yukimura: Then if they are found to be infected, to get the vaccine or to do all the prevention necessary at birth, these are all things that can happen as long as people know about it and take action.

Mr. Jackson: Dr. Yoon told you about two-thirds of infected people just do not know it. Those are the people that where we want to educate. Let them know their status, so that they can protect themselves. Dr. Yoon has treatment, the other physicians have treatment and can follow along very well. Knowledge is power for those people. They need to know their status.

Ms. Yukimura: Well, thank you very much for taking this one and for coming forward to ask for the Council's support, and also in this process to get the education out. Hopefully people in this audience and the viewing audience will take your words and spread it so that people can get screened. So if people want to get screened, where do they go?

Mr. Jackson: The first is to go to see their doctor. If they do not have a doctor or they do not have someone they can go see, come to us. Malama Pono provides free, confidential screening.

Ms. Yukimura: Thank you very much.

Dr. Yoon: Thank you.

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: Members, what I would like to do on this item, first I would like to accept the communication. Secondly, I would like to then vote on the Resolution. Now, with the Resolution, I want you to know that I would encourage Malama Pono to, in fact, use that with the Office of Economic Development as an approved Resolution by the Council. You have room, then, to apply for Economic Development funds from the County for the purpose of education and that would be the intent.

Upon a motion duly made by Ms. Nakamura, seconded by Mr. Chang, and unanimously carried, C 2012-443 was received for the record.

There being no objections, Resolution No. 2012-60 was taken out of order.

Chair Furfaro: We have read the Resolution accordingly. I would like to have a roll call vote on the resolution, please.

Resolution No. 2012-60, RESOLUTION TO SUPPORT MALAMA PONO'S EFFORTS TO ELIMINATE HEPATITIS B ON KAUA'I THROUGH THE "HEPATITIS B ELIMINATION PROJECT": Mr. Kualii moved to adopt Resolution No. 2012-60, seconded by Ms. Yukimura, and carried by the following vote:

FOR ADOPTION:	Chang, Bynum, Kualii, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL - 7,
AGAINST ADOPTION:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0.

Chair Furfaro: We have seven (7) ayes for this Resolution. The Resolution has been approved. I would encourage you to work with that Resolution with the Office of Economic Development for any potential grants.

Mr. Jackson: Thank you County Councilmembers.

Chair Furfaro: Glenn, we have got the Planning Director for fifty (50) minutes. Would you like to come up and add comment?

There being no objections, the rules were suspended.

GLENN MICKENS: Just for a minute, yes, please. Thank you, Jay. For the record, Glenn Mickens. I really thank Dr. Yoon and Mr. Jackson for their very informative speech on HIV and liver disease. It is critical. If I heard properly, much of the disease comes to Hawai'i from the Philippines and other Pacific Areas. Would it not be possible to make sure that these other areas are screened prior to the time that the people come over here? I do not know if it is possible or not, but it seems like if that is where the biggest problem for the Hawaiian Islands is, it seems that we should be able to screen these people prior to the time they get here and now possibly infect other people here in Hawai'i, which is the statement that it is one of the biggest areas infected in the United States. Anyway, that was just my question. I do not know whether Dr. Yoon or anybody can answer it. Thank you.

Chair Furfaro: Thank you, Glenn. Thank you very much. Members, I would like to have the next priority item read, please.

There being no objections, the meeting was called back to order, and proceeded as follows:

There being no objections, C 2012-448 was taken out of order.

C 2012-448 Communication (11/14/2012) from Councilmember Kualii, requesting the presence of the Director of Planning and a representative from the University Of Hawai'i Sea Grant Program to provide an update on the erosion occurring at Wailua Beach and the impact that it may have on the multiuse path in that specific area: Mr. Rapozo moved to receive C 2012-448 for the record, seconded by Mr. Chang.

Chair Furfaro: May I ask for the Planning Director, may I ask for the Parks Director, and may I ask for the Building Division Manager to come up at present time.

Mr. Rapozo: Mr. Chair, I have a question. I understand that the Planning Director only has limited time, but is it possible to get someone else from Planning to continue the dialogue once he leaves?

Chair Furfaro: We will ask him that question.

Mr. Rapozo: Okay. Thank you.

Chair Furfaro: I want to remind you folks that the Sea Grant people are out-of-town for Thanksgiving, and the Planning Director has a conflict with the Regents Meeting. Mr. Kualii was the one (1) that made this

request for me. I honored his request since this is his last meeting. Mike and gentlemen, thank you for being here. I want to make sure that I get some particulars correct. We are dealing with the area between the Wailua Beach fronting Coco Palms for the bike path. Mr. Rapozo has asked the question, if we need to call on another person in the Planning Department, do you have somebody available to us to fill in your slot?

There being no objections, the rules were suspended.

MICHAEL A. DAHILIG, Director of Planning: As it relates to the subject matter that came into the communiqué, I am actually the backup for the person that was requested to be here. I am already the backstop as it is. So with respect to being able to at least for discussion purposes just have a working knowledge of the study that was conducted by Sea Grant, I am the only other person that would be able to proficiently do that. That is why I am here.

Chair Furfaro: I want to remind members, as well as the audience, this is a communication that has no action other than to receive it, but we do want to get some clarification on it. This is just a couple "yes" or "no" answers, Mike, if I could really quick? This came before the Council on April 14, 2009. I believe at the time it was shared with us that the approvals for the area fronting the beach was driven by State funding, and therefore the particulars on the beach was left with DLNR for their comments. Is that a true summary?

Mr. Dahilig: I may have to defer to the gentlemen to my right. I know there were reviews by DLNR with respect to the project when it went through permitting, but I do not have a working knowledge of anything that happened prior to my tenure at the Department.

Chair Furfaro: Gentlemen, either one of you can answer the portion on the Wailua Beach Corridor as getting their approvals through the State DLNR?

DOUGLAS HAIGH, Chief of Buildings: The project is funded by Federal Highway Administration and it is administered through Hawai'i Department of Transportation. Now during our approval process, we do go through DLNR as far as the Planning Director mentioned. So all required approvals have been given.

Chair Furfaro: So the approvals required... or the need to meet requirements of approval, those came from DLNR?

Mr. Haigh: I do not remember exact approvals from DLNR. I know that we worked with State Historic Preservation Division on this project. I do not remember if there were specific approvals required by DLNR. I do not remember that, but I certainly know that during the environmental process, they would have made comments, and we would have responded. During the SMA permit process, they would have made comments and we would have responded.

Chair Furfaro: I will send that over in a communication. I would like to get a very clear understanding of how those approvals were met. Okay.

Mr. Rapozo: I have a follow-up question.

Chair Furfaro: Go ahead.

Mr. Rapozo:
was that process?

Doug, when was those comments or what

Mr. Haigh: As the Chair mentioned, 2009 was the date when we were here. I have not memorized the dates. This has been a long ongoing project with a lot of discussion over many years. To get specific dates, I would have to go back and research.

Mr. Rapozo: I guess I am interested in the date that DLNR submitted their comments during the process or SMA permit. My recollection tells me it was probably five (5) six (6), seven (7) years ago.

Mr. Haigh: I would have to check my files.

Chair Furfaro: Thank you, Mr. Rapozo. Please understand, we want complete background on this particular corridor on the critical dates. I see it came in front of the Council April 14, 2009. It did not deal specifically with the beach. It implies that that was not necessarily an additional requirement of the County, but just DLNR. So Mike, I am going to let you make your presentation. I am going suspend the rules because I know you are on the time clock. So you have the floor.

Mr. Dahilig: Thank you, Mr. Chair. Members of the Council, thank you for the opportunity to give this short presentation concerning the question that Councilmember Kuali'i had sent over with respect to the study that was conducted by our UH Sea Grant College Extension agent and the erosion that was observed in that area. I guess before I start, I do want to just personally say my *aloha* to both Councilmember Kuali'i and Councilmember Chang and thank them for their service and look forward to crossing paths with them again in the future.

This is the memorandum that I am basing my presentation to the Council off of, and it was communication between our Coastal Land Use Extension Agent, Ruby Pap and Doug and Lenny. Ruby is on personal leave. She is visiting her family on the mainland. She sends her regrets she was unable to be here. So the task fell on me to try to explain this report that she had conducted. Not to give myself any more credibility because I am not a practicing geologist, but I did graduate from the SOEST Program and did study littoral drifts and these types of ocean processes. It is a little familiar to me and, hopefully, I can do her study justice.

What I want to first point out is the study that she had conducted was premised on a set of facts that Lenny and Doug had sent over to them that. That is why as we go through the presentation, I will actually be turning over some of the design issues to them to explain, because she had actually drafted this report on a set of factual circumstances. So as all of you know, the County had commissioned studies of the Coastal Geology Group of the Geology and Geophysics Program at UH SOEST. What the Coastal Geology Group did was take a number of historical aerial photographs, as well as other remote-sensing data that was available and created a montage of different shoreline, where the shoreline had been historically over so many years.

This is the data set we that got from UH SOEST with respect to the area in question and this is the area that they call the Wailua Bay study map. And, in particular, we were really concerned about this section of their study, which is the

Wailua Bay portion. As we zoom into the aerial you will notice that there is a number of yellow lines here. What they do is they call these transects. Each of these transects are then compared through their algorithms they have regarding retreat and accretion. They create a bar graph that shows essentially what is going on over a long period of time. As you noticed, the first study they looked at went 1927 and the most recent one before the 2010 study was actually in 2008. I do want to mention Councilmember that actually the Planning Commission did pass out a revised version of the shoreline setback bill yesterday.

The implementation of the 2010 Fletcher Study will be part of that legislation as we go forward. So you will be seeing a lot of this discussion as we go and discuss the Bill together. You will notice that blue means accretion and red means erosion. What the study group had found is that this area of Wailua Beach is accreting at an average of .06 feet per year. Now, it is very...I know it would be hard to believe, but they are looking at it from a periodic timeline from 1927 on. What they found is that the beach let say over say eighty (80) something years is actually growing in length versus retreating. For Planning purposes, we engage in this study, because when we permit static structures along the shoreline, we want to have an understanding of what is the long-term dynamic environment. But in the Sea Grant memorandum, what they did observe is that there are periodic instances of high erosion in this area. For instance, if you look at this particular purple line, which is from April 1975. The purple line actually goes all the way up to the highway. There are guys in my office that anecdotally say they remember times when they were in Kapa'a High School that they would have to shut down this road because the waves washing over the shoreline. So what Sea Grant is saying there is this option here.

Back in 1987, the shoreline actually went all the way out to that light purple line. So the width of the actual sand there was actually a lot wider back in the '80's. What the Sea Grant memorandum does acknowledge is that this is a very dynamic environment. When we discussed the movement of sand in littoral systems it is depend on things like prevailing winds, whether there is a stream that comes into play, whether the reef offshore is alive and producing naturally-created sand. So there are a number of factors that can explain why you see such a dynamic shift in the way that the shoreline has moved. What Ruby does mention in her study is that the beach lost in this particular period that we are observing is probably explained by more than typical persistence in the trade wind flow, as well as the infilling of the river mouth due to the drought season that we are currently experiencing. So normally what we have is, we have the littoral or long shore drift current based on the prevailing trade winds that come this way and reflect and move the sand in this direction, northward about the shoreline. But a lot of that movement of sand is dependent on this sand that piles up here, because if there is not enough water to flush the sand out into the trade wind influenced wave direction, there is not enough sand supplied to actually then move the sand up along the littoral drift current that is observed in this area. So based on this observation, they took a look at the design elements that were presented by Doug and Lenny, and she had some findings.

Essentially, in a nutshell she explained that she did prefer the design to something that was more static. So when she says that a moveable pathway design is advantageous for the Wailua River or the pathway due to the episodic erosion at Wailua Beach. What she is saying is that the design they presented is in a sense preferable in the nature that its concrete slabs designs that can be moved and readjusted as these episodic erosional events occur based on lack of rain, lack of

wind, coral bleaching, you name it. There are a number of factors that can probably explain these episodic, high periods of erosion. But she did also mention that she does prefer this option of moveable structures versus the hardening of the shoreline. As a geologist myself, I would concur with her in the sense that when you look at revetments and jetties and these types of offshore structures that tend to impede what is the littoral current. It could inhibit the flow of sand and create artificial erosion in areas that we necessarily may not want to see it. It is a prevailing concern along shorelines like Waikiki Beach where you have seen the introduction of rock walls having an impact on the shore break offshore. Many surfers do have recollections of old timers that were able to surf at breaks that were no longer there because you have these rock structures. With the design that is being proposed by UH as part of the study is preferable, because it does not entail the hardening or interference of the littoral current in this area. What Ruby does mention, though, is that there is one other option, and this is again from her study. It is not presented by the engineers, but it is a boardwalk and she has said that this is something that the Army Corp of Engineers has employed in areas just like this and that it may be another option for the engineers to take a look at to address the episodic erosional events that do occur in this area.

In a nutshell, the way I read Ruby's study is essentially saying be cautious about the short-term temporal type of events that occur and designs for those. But with respect to an actual long-term investment in infrastructure in this area, you are actually seeing a progression of the shoreline towards the sea, versus having it retreat towards the highway. In a nutshell, that is what we had. Now what I am going to do is actually turn this over to Lenny and Doug, because I know it is a little bit cart-before-the-horse. Again, I would to thank the Chair for accommodating my timing here. This is actually the explanation of the design elements that were presented to Ruby when she actually did the evaluation back in October. So I will turn it over to Lenny.

LEONARD RAPOZO, JR., Director of Parks & Recreation: Not to change Mike's Christmas background but, I have passed out before you a report that I wanted to make for this particular meeting, which is essentially passed out as a special report. You should have it before you, which are the same pictures that Mike had included but I have to say ours look better.

Mr. Rapozo: Excuse me real quick, Lenny. Mr. Chair, I have a question. Being that Mike is going to have to leave, can we ask questions of Mike before that because I am assuming that Lenny and Doug will be here for their presentation, but I want to make sure that I have some questions for Planning that I want to make sure that are covered before he has to leave, being that no one else will be here.

Chair Furfaro: I think that is fair and reasonable.

Mr. Rapozo: Mike, you talked about the Shoreline Ordinance in your earlier discussion. Based on what the Shoreline Ordinance dictates or states today, is this project in compliance or are the setbacks established in that Ordinance, today would we meet those requirements?

Mr. Dahilig: As far as I understand and I do want to make sure, and I would probably offer to follow-up if you want to send a question over. Based on what my recollection is regarding the project, there is valid SMA for this project. The SMA, in order to be issued, would be premised on compliance with

shoreline certification or setbacks. Now what I understand is that on the date that the Shoreline Setback Ordinance was passed, the current one we are enforcing in the Planning Department, it was actually came after the applications for this particular project. So the phrase "grandfathering" from the current Shorelines Setback Ordinance I think is appropriate.

Mr. Rapozo: I am not asking whether it is legal. I am asking if we are in compliance with the existing requirements in the Ordinance?

Mr. Dahilig: If the Ordinance was to apply today to this situation even though it does not apply, what would be the setback?

Mr. Rapozo: The setback, right.

Mr. Dahilig: It would potentially be zero.

Mr. Rapozo: Correct.

Mr. Dahilig: Because when you look at the study, the current Shoreline Setback Ordinance does provide the implementation, sorry, not the implementation, but application of Dr. Fletcher's study that was in draft form. So when we look at the accretion that is going on along the shoreline, that essentially defaults to a zero in the way that we apply it because there is no actual further erosion that we would see like in the red sections. So there is a state-mandated minimum shoreline setback, and that would be the applicable shoreline setback, and so that would probably be the applicable shoreline setback.

Mr. Rapozo: And that is my question, this path is well within that shoreline setback.

Mr. Dahilig: I do not know off the top of my head. It very well may be, but I would have to...

Mr. Rapozo: Try to give him the picture. Somebody give him the picture.

Mr. Dahilig: Again, I do not certify the shorelines.

Mr. Rapozo: I understand that, but the shoreline is set by State Law, the minimum?

Mr. Dahilig: The minimum.

Mr. Rapozo: And you are telling me that you have not been out there to take a look?

Mr. Dahilig: In terms of what?

Mr. Rapozo: In terms of where the proposed path is going to be.

Mr. Dahilig: Yes.

Mr. Rapozo: And where the shoreline is?

Mr. Dahilig: Because there is a valid permit on the project.

Mr. Rapozo: When was that permit approved?

Mr. Dahilig: I believe it was before my tenure at the County.

Mr. Rapozo: Correct. Do you remember the date?

Mr. Dahilig: I do not know off the top of my head, Councilmember.

Mr. Rapozo: It was a long time ago.

Mr. Dahilig: And it is still a valid permit.

Mr. Rapozo: I understand it is valid. But we as a County should be setting that standard. I am looking at what I see out there, we are well within the setback. Granted it is, I am not saying it is illegal, but it is obviously going to be within that setback. I guess the question is how do we tell someone else they cannot build within the shoreline setback when we ourselves are doing it?

Mr. Dahilig: Well, first off...

Chair Furfaro: Audience please. We have the Planning Director here for a short period of time. You can hear the answers, you can digest them; however, do not let us stall the responses here. Go ahead, Mr. Rapozo.

Mr. Rapozo: That was the question.

Mr. Dahilig: Again, I would hate to give an answer that I am not quite educated on at this point with respect to where that shoreline is. As you know shorelines are certified by the State, not by us.

Mr. Rapozo: Correct. Is it not true that the shorelines should be certified every year?

Mr. Dahilig: We have processes that the shorelines are good every year to engage into the planning permitting processes.

Mr. Rapozo: Right.

Mr. Dahilig: So it is almost a stacking process that is laid out by law. Which is you first get your shoreline certified by DLNR OCCL and approved by the DLNR, upon which time you have a period of time for which to say, "okay, this shoreline is valid for a year." Then I can go to the next agency to get setback approval and then you can get your SMA. It is a stacking approval that essentially once the actual building permit, and in this particular example is an SMA permit, is approved and that essentially grandfathers the whole process because it is based off of this static line that was drawn back (inaudible).

Mr. Rapozo: How long is the SMA permit valid for?

Mr. Dahilig: Well, it depends.

Mr. Rapozo: In this case.

Mr. Dahilig: I do not know off the top of my head, Councilmember. I would have to take a look at the permit and get back to you with an answer.

Mr. Rapozo: Okay.

Chair Furfaro: We will send that over as a question.

Mr. Rapozo: Well, I believe it is two (2) years.

Mr. Dahilig: That is the standard protocol but sometimes...

Mr. Rapozo: But in this case it is not?

Mr. Dahilig: I do not know. Again, I cannot...

Mr. Rapozo: Okay. Let me just ask the hypothetical. If it is not, we would have to require a new SMA permit, which would require a new shoreline survey?

Mr. Dahilig: Not necessarily.

Mr. Rapozo: Really?

Mr. Dahilig: The Planning Commission is entitled to look at the progress of the permit. In certain cases there are circumstances that the Planning Commission believes is appropriate to go ahead and say, "we are going to give you an extension beyond a certain amount of time." There is also when you look inherent in the conditions of SMA permits, there are trigger points that essentially override the two (2) year staleness of the permit. So without intimate knowledge, because today's presentation was more so preparing on what Ruby's scientific memorandum was about. I certainly can get back to you about what the permit conditions outline and what are the trigger points for certain staleness types of situations. That would essentially prompt what you were suggesting.

Mr. Rapozo: That will come over, I will tell you. I am going ask that this matter be brought up again and not received. I know the motion was to receive, but I will be seeking a deferral because I think it is important that the public understand. If, in fact, the SMA permit can be extended, and correct me if I am wrong, in cases where there is no change for whatever reason, the Planning Commission or the Planning Department believes that an extension of the permit is justified. In this case, the conditions of that beach and this is a question, has not the conditions of Wailua Beach changed from when that SMA permit was granted and today?

Mr. Dahilig: The conditions of Wailua Beach are reviewed in the context. When you are looking at these particular shoreline certifications or shoreline events are viewed temporally from a long-term perspective. It is the policy of the County to look at it over the long term. These episodic events, based on

what we understand, can be designed around versus looked at from a preservation standpoint that the Ordinances seem to, by policy, try to guard against, which is static structures that are there for the long-term. So to characterize that in the short term, yes, there is observed changes in the way that it looked six (6), twelve (12), eighteen (18), twenty-four (24) months ago. That is clearly outlined in Ruby's study. But she continues to maintain that over the long term, the studies that we employ as part of shoreline protection do observe a .06 foot per year accretion over the long term. And this .06 accretion has actually been confirmed by two (2) other independent studies both by Sea Engineering, which was commissioned for another study in 1991 as well as Makai Engineering. Makai Engineering is actually doing the underwater sea air conditioning program. So they have a lot of experience in shoreline dynamics. They have confirmed the Fletcher study with respect to this idea of long term accretion.

Mr. Rapozo: I only have one more question, Mr. Chair.

Chair Furfaro: Go ahead.

Mr. Rapozo: That study you reference is what? An eighty
(80) year study?

Mr. Dahilig: It is a 2010 study that...

Mr. Rapozo: No, no, no. The accretion rate of .06% a year
is based on historical data over an eighty (80) plus year span.

Mr. Dahilig: That is correct.

Mr. Rapozo: Are we going to allow that standard to the
developer, the private developer that wants to build up to the ocean, as long as he
comes up with historical data that says accretion is .06?

Mr. Dahilig: Well, we, and I think this would be an
appropriate discussion when the Bill that we are going to be transmitting over from
the Commission comes to this body for discussion. When we look at static
structures, we tend to observe a lifespan of between seventy (70) to a hundred (100)
years for the life span of, let us say, a house, a building, a road.

Mr. Rapozo: Right.

Mr. Dahilig: So an observed period of eighty (80) years is
certainly within that ballpark of what is currently best practice among industry,
you know, building industry people that say the long term life a house between
seventy (70) to a hundred (100) years.

Mr. Rapozo: I understand all of that, Mike. I helped to
author that Shoreline Bill and I am very familiar with why we choose those years
for the life. My question is, are we going allow anyone else to come to the County
and say, "well over the last hundred (100) year, my property is accreting." So are
we going to give them that same kind of latitude to build up to the beach because
that is what we are doing. We are building a structure up to the beach, and granted
it is not a house, but it is still a structure that is going to effect. Is that what we are
going to be forced to do?

Mr. Dahilig: Well, I think, to answer that question Councilmember, it engages also a discussion of a lot of the case law with respect to accreting shorelines. In particular, there is a case on the Big Island that involves the accreting land of lava. As lava continues to progress along...

Mr. Rapozo: We are not talking about lava.

Mr. Dahilig: I understand. But let me, just for discussion purposes, say that there is a static line gets fixed between what is personal property and State property based on that case. So even though you have a shoreline that is accreting, it does not necessarily mean that the land that you own adjacent to the shoreline is also going to grow with what happens. And so as part of the discussion, we have had with the Planning Commission over the past few months over what is appropriate in these cases that you do see accreting shorelines, our belief is that you should not be awarded for an accreting shoreline. We are proposing that if the map does show blue, it is going to be an automatic zero with respect to what the shoreline setback will be. There will be a minimum shoreline setback in order to comply with State law and we are not going to be saying because you have this accretion, that you are going to necessarily see that line move into State property because the State property line gets fixed if you see an accreting shoreline.

Mr. Rapozo: That is all I have for now, Mr. Chair.

Chair Furfaro: Mike.

Mr. Dahilig: Yes, sir.

Chair Furfaro: I would like to ask a few questions. The correspondence you shared on the floor, I think some of it was initiated by me back in October.

Mr. Dahilig: Right.

Chair Furfaro: I have been dealing with the Sea Grant people. It looks like Mr. Heu got this second piece of correspondence. I do not know if Doug, if you got it, or Lenny? But maybe you did, Mike. In that report, as I am dealing with Ruby, it talks about the Sea Engineering, Inc., they are contracted by the Planning Department.

Mr. Dahilig: I believe they are actually on contract. We have a contract with Sea Engineering for a separate training program that they are going to actually starting on December 7th. But I believe that that particular contract goes between the Sea Grant Program and Sea Engineering directly.

Chair Furfaro: Well, the second letter in response to me is about six (6) pages long and deals with my questions about Kekaha, as well as Wailua. But there is a recommendation in there from February 2012, and it basically says they have made recommendations and solutions, which are outlined in further detail in the report, which includes beach nourishment and improvements to the existing areas, including an entire beach replenishment plan, placing approximately seventy-four thousand cubic yards (74,000 yd³) of sand to extend the beach seaward. Approximately twenty-six (26) feet on the northern end and more towards the Wailua Bridge. It appears to contain a significant volume of

sand that could last us as much as twenty-five (25) years. Now, Waikiki does a beach nourishment program. You know in Mākaha, I still have a family home right on Upena. The City and County is doing a Beach Replenishment Plan. Has this gone anywhere as far as being identified in a CIP Plan for the County? It is great it is in the report. It is six (6) pages and I have to get to page 5, the last paragraph to see that there has been back in February, eight (8) months ago a recommendation for an ongoing plan to replenish sand there. Has that surfaced somewhere, CIP item?

Mr. Dahilig: Not to my recollection, Chair. I could be mistaken, but I do not believe so.

Chair Furfaro: Okay. Then on the numbers that you folks used for the history. Unfortunately, we skipped 1959 and '59 was Hurricane Dot. It went between Mākaha and east Kaua'i, but there is no shoreline information for any of the hurricane years. But there is also no correlation between ocean history in dealing with the Southeast Pacific, the Australian corridor, or the Western Pacific. It relates to the tracking of storms. There is no correlation between the erosion. Do we have something like that planned?

Mr. Dahilig: I guess, and maybe...

Chair Furfaro: Is that something Sea Grant could do for us?

Mr. Dahilig: It is certainly something that we can ask as a work order for Ruby regarding these hazards. These episodic storm hazards that do tend to fundamentally change the short term of these shoreline environments. It is certainly something we can discuss, Chair, about maybe a work order for her.

Chair Furfaro: Yes. I would like to see some correlation. I mean, if I go to Wainiha, they have one hundred and two (102) years of history of rainfall for the hydro plant. I would think we would like to have some history by NOAA of cyclones, hurricanes, and typhoons in the West and South Pacific as it relates to wave current changes and so forth. I am going to have the staff make copies of these reports for you folks so you can see. The second one, you have to skip through the Kekaha stuff, but on page 5 it makes reference to a replenishment plan. I do not see that on any CIP, so I will get this distributed to you. Could you distribute those packets to the rest of the members? They have them already? Okay, very good. Thank you, Ashley. Vice Chair.

Ms. Yukimura: Thank you.

Chair Furfaro: Oh, I am sorry, and I think that KipuKai was as well. So go ahead KipuKai, I am sorry.

Mr. Kuali'i: Mine is very quick and has to do with the slide that was up on nineteen (19), showing the science basically. *Aloha* Mike.

Mr. Dahilig: *Aloha*.

Mr. Kuali'i: *Mahalo* for your work and being here today. In the book I cannot really read the dates, but I wanted to see the slide up there. It was page 19 and you showed all the different colored lines. Basically, it is the historic shoreline study, right?

Mr. Dahilig: Yes.

Mr. Kualii: I am just curious as to how the data relates year to year, because if they took it during the summer, you know, and then the spring and in the winter. When we have winter storms and swells that is probably when the most erosion is happening. These, can you make it larger? I cannot really see it. I thought we saw it earlier.

Mr. Bynum: It was another slide.

Mr. Kualii: I thought we saw it earlier. It was another slide. In the book you cannot really see the dates either.

Mr. Dahilig: It should be like the third slide or something. It should be about the third one.

Mr. Kualii: You know, how does that data really make a point when it is all over the place? You are not really comparing, you know, the real seasons, if you will, or the worst of it, the winter storms and the swells?

Mr. Dahilig: I guess the way that we interpret it in the process of shoreline sand transport, even though we may look at it as in short periods as what has happened during the summer, what has happened during the fall, spring, winter, et cetera. But there are certainly annual observations that you are referring to that change as a consequence of winter storms and summer storms. I mean, right now the first big winter swell is coming through and it is affecting the north shore, and certainly the sand looks different now versus during the summer when there is virtually no wave action. The best that I understand from how their ability to reconcile these different points of observation during different seasons is that the actual littoral cycle is over, is compounded over a long period of time. You do have the short periodic seasonal changes that you observe, but the actual accretion and erosion is beyond a one (1) year cycle that we normally observe.

Mr. Kualii: So how were these particular dates and points picked versus all the other data that is out there?

Mr. Dahilig: The basis for these actual shorelines was actually...for instance in 1927, we had just started to fly as a species. And so what was done is a bunch of aerial photographs. What, essentially, Sea Grant did was take aerial photographs from these historic times and overlaid it onto what is currently observed as their remote sensing information and tried to be able to outline where they could observe the historical shoreline at that period in time. So that is where this data came from. It was not necessarily something that was found in record books or found in certain areas. For instance, when you look at the actual study island-wide, you will notice there are actual even fluctuations in the amount of historical shorelines that Sea Grant was able to mine from past observations. So in this particular circumstance, it seems like there is a pretty robust amount of information. But if you look at other shorelines, there is minimal information. So in this particular case, there is a lot more data to go off on.

Mr. Kualii: So the only other thing is, I think we heard testimony earlier, an older Hawaiian gentleman, Mr. Kaleiohi, was a lifeguard on the beach way back when. And he mentioned some Director back then, State Administrator - County Administrator. He said something about basically

replenishment and nourishment that when the sand was all gone, they would move the sand. Is the record of human action that impacts how things have changed aligned with that so we know that it was actually fixed or caused by something other than just nature?

Mr. Dahilig: You certainly point out a potential caveat that the Sea Grant people may not be aware of. I do not know firsthand whether they are aware of some of the anecdotal human interaction with the shorelines that would essentially be an input into how they extrapolated this information. That is certainly something I could share with them.

Mr. Kuali'i: The overall conclusion that it is accreting may not be true if not for human taking action to save the beach?

Mr. Dahilig: It is one (1) of the flaws in science. That certainly science is based on a certain set of premises. And if one (1) of those premises may not necessarily be correct, it may create an uncertainty as to the result. I can only attest to the professional opinion of Dr. Fletcher and his staff at UH as to the accuracy of this and what we can rely on, their methodology has withstood academic review by their peers.

Mr. Kuali'i: The last thing for sure because you did say that you were speaking on behalf of Ruby Pap.

Mr. Dahilig: Yes.

Mr. Kuali'i: You said she made her study based on what was given to her as far as the factual circumstances and the design elements.

Mr. Dahilig: That is correct.

Mr. Kuali'i: But, in fact, she then was limited to, "we are going to put the path right here and react to that," as opposed to, "where is the best place for the path, whether it be *makai* of that existing wall, *mauka* of that existing stonewall or on the stonewall, remove the wall and put it sort of like on the wall basically where it is?" She only looked at putting it on the wall.

Mr. Dahilig: That is correct. Based on what I could ascertain from her first paragraph and work product that was the sandbox that she was working in, not to create an analogy like that, but that is really what she was working in.

Mr. Kuali'i: Thank you.

Ms. Yukmiura: Thank you. Councilmember Bynum, question.

Mr. Bynum: Very quick, you talked during your presentation about static structures and could you define that?

Mr. Dahilig: I guess a static structure is anything that would be placed near the shoreline that down the line could potentially be affected or affect a shoreline process.

Mr. Bynum: So it is a more permanent construction?

Mr. Dahilig: Exactly. So anything from a house to a building, restrooms, a road, piping, you name it. It is almost anything that would be considered human development.

Mr. Bynum: And the structure, the bike path structure that these guys are going to describe to us, and I think that a lot of the public may not know what the current plan is. Is it a static structure?

Mr. Dahilig: As far as I understand from the way Ruby had analyzed it, it is not a static structure. It is movable.

Mr. Bynum: I just wanted to make sure. I tried to write down one the sentences that you said, and I want to make sure that I got it right. You are said that this plan does not involve shoreline hardening or interfere with sand movement in the littoral cell. Did I get that right?

Mr. Dahilig: Yes.

Mr. Bynum: Thank you.

Ms. Yukimura: Thank you, other questions? If not, I hope mine is the last one for you. When do you have to leave?

Mr. Dahilig: I have an 11:53 flight.

Ms. Yukimura: So we will get you out in five (5) minutes. My question is triggered by the comment or the observations of the Chair, regarding replenishment. If we have one of those episodic events that bring the waves high up onto the beach or that area, is replenishment a possible solution to address a short term problem?

Mr. Dahilig: It is readily employed and, in fact there is one (1) project on this island that is engaged in replenishment and that is by Kukui'ula. It is something that in the short-term temporal sense, coastal geologists have recommended as a means of trying to armor the shoreline without actually creating a hard structure. You see it prevalently used in Waikīkī. Now where the sand comes from is another question of debate and I do not want to get into that.

Ms. Yukimura: No.

Mr. Dahilig: Certainly, it is has been done periodical and, in fact this is the second one to my recollection that they have done in Waikīkī most recently.

Ms. Yukimura: I have one (1) more question. This erosion we were shown photos that were presented by the audience. I did not see a date on it. But I presume it is within this past year. Is this by Sea Grant's analysis one (1) of those episodic events; that based on the long-term analysis should decline? Is there any prediction as to how long it would last?

Mr. Dahilig: I do want to add one caveat, Councilmember. That what we have as data does not include notions of sea level rise. So from a

standpoint of how we as planners apply policies of sea level rise is something that the science has not caught up yet to. So based on it from a two-dimensional standpoint versus a three-dimensional standpoint, which is the sea level rise, her two-dimensional analysis seemed to be yes, this is one of those episodic events based on the high level of sand piled up at the mouth of Wailua river. That sand needs to essentially get into the littoral drift flow, which can only be done by high amount of flushing movement caused by *mauka* rain to push that sand into the offshore area to then get caught into the offshore trade wind wave influence. So I would characterize it as episodic.

Ms. Yukimura: Okay, thank you, any other questions?
Councilmember Nakamura.

Ms. Nakamura: No, I have some questions, and I will put them in writing and send them over.

Ms. Yukimura: Okay, thank you. Thank you very much,
Mike. Real quick.

Mr. Chang: Can you answer one (1) more question?
Well, I will make it fast, because I was going to wait but since he has to leave. You talked about the sand underneath the bridge. There is an incredible amount of sand under the bridge.

Ms. Yukimura: That is what he said.

Mr. Chang: I understand that. But can the DLNR which is standing by...my understanding is the water, if you look at the river mouth, it is as wide as it has ever been. Water is backing up out into the House Lots area behind Coco Palms. I would push that sand. I would open up that sandbar and see what is going to happen. I have never and people have never seen the sand pile up that high and that wide. I mean, there is over one hundred (100) feet wide of sand and it is so high up. I would open the river mouth up and see what happens.

Mr. Dahilig: That may be a good question to ask of the County Engineer. I do not necessarily know what the agreements are with respect to mouth openings. I know they have certain agreements, for instance in Hanapēpē and Waimea, that when the sand piles up that County and State have some type of shared agreements so this may be one of these shared agreements situations that should be asked of the County Engineer.

Ms. Yukimura: Thank you. That was a very good question.
Thank you very much Mike.

Mr. Dahilig: Thank you, Councilmembers.

Ms. Yukimura: Before we go to Parks and Mr. Haigh, we are going to take a ten (10) minute caption break as required by law. So we will be back at 11:10.

There being no objections, the Council recessed at 11:00 a.m.

There being no objections, the meeting was called back to order at 11:13 a.m., and proceeded as follows:

Ms. Yukimura: So what we will do is have the briefing from Mr. Rapozo and Mr. Haigh and then we will go into public testimony. I know some of you are eager for that, but I think we need to hear the proposed project. Mr. Rapozo.

Mr. L. Rapozo: I have prepared a brief report regarding the area of Wailua beach between the bridge – Kuamo'o Road and Seashell is the area we are talking about. The topics is the location of the path, the subsurface investigation we had done, the June beach erosion, the beach accretion since June, and Pat's design changes that have occurred from the initial start of this project. I will not cover the Sea Grant since Mike did a pretty good job with that and lastly we will go over the construction schedule as we see it today. This picture on page 3 of your booklet shows you overhead view of the line of the path fronting the Wailua Beach area. These two (2) slides is the beginning of where the construction will take place. The current end of the path is here at the bridge at the intersection of Kuamo'o and the red line is we are depicting this red line as the edge of the *makai* edge of the path. In other words, the path will run from the edge of the road towards this red line. The red line shows the direction or edge of the path as you are looking north on this. This area here shows the red line as we are looking south towards Kuamo'o. Again this is the *makai* edge further down from the previous photo that we have just shown. This area here is again where the path will be running alongside the road, up until here is another further picture as we continue towards the Seashell area and the famous rock wall as we know it.

Ms. Yukimura: So that wall will be moved; right?

Mr. L. Rapozo: Actually, the wall will come down and there will be another wall constructed right about here, another barrier. And as we get closer towards Papaloa fronting the Seashell parking lot, ending right here, where the Seashell parking lot is, we make the connection to Papaloa here.

Ms. Yukimura: Papaloa is the road *makai* of the service station?

Mr. L. Rapozo: Correct. In addressing the archaeological assessment and subsurface, in 2009 through a lot of public interaction and working with Native Hawaiian organizations, the Mayor committed to the public to have an additional AIS or additional archaeological subsurface investigation done. He wanted to be sure. I am sorry, can I step back a little bit? Initially, the path was slated to go on the beach with removable boardwalk. Through discussion, public discussion, Hawaiian Native organizations, concerns about what may lie under the beach, the Mayor in discussion with State Highways and looking at alternatives, State Highways allowed us – this is a joint project between the County and State Highways to allow us for the path to go within the State right-of-way. I want to make clear this is part of the road and the State right-of-way, where this path is currently going. That was also to get the path off the beach.

In addition, the Mayor wanted to make the standard higher, let us make sure there is nothing underneath where we are going to go in terms of historical properties. So we conducted AIS by Cultural Services Hawai'i between January 10th and August of 2011. There was inspection and it was confirmed that no surface cultural resources existed. Ground penetrating radar survey results were also inconclusive. Subsurface testing consisted of seventeen (17) back-hoe assisted test trenches was done along the path. In the trenches contained a large

amount of modern debris including plastic bags, cups, aluminum cans, glass containers, and other household or personal items. Asphalt and concrete cobbles and large basalt boulders were also encountered throughout the fill deposits.

This map, it is in your book on page 12 shows the test pits, the seventeen (17) test pits. These test pits one (1) through four (4). And this one depicts four (4) through twelve (12). And finally, on page 13, thirteen (13) through seventeen (17) of the different test pits along the path where the path is currently being proposed today. This is a typical picture of what the excavation was done and what was unearthed and how wide it was trenched. Again, this is a typical trench. After the work was performed, these are the testing results. Again, there was presence of a lot of modern debris within the majority of subsurface deposit, suggesting any historic or pre-historic deposits that may have existed within the project era have either likely been removed, displaced or impacted during the modern construction. No traditional Hawaiian or historical artifacts, cultural deposits, or cultural resources were encountered. This is a picture from June 20th of this year what the beach had looked like fronting Wailua. This was towards the Seashell area, and this one went back towards the bridge area. This is the same picture in the same direction that was taken on November 16th of the beach area.

So as we can see, as was mentioned earlier, the beach, some of it has come back, maybe not to the original that we know of it, but the beach has accreted. This was presented by Director Dahilig. Pat's designed changes, as we had mentioned for movement from the beach to the State right-of-way, highway right-of-way, we have revised it because of the episodes of the beach erosion. The design has been revised from a permanent structure to a removable structure, which will be approximately ten (10) feet long, and it could be removed in sections. We will try to maintain minimum depth and reduce the transition from the existing twelve (12) wide path structure to eight (8) feet wide. Twelve (12) feet wide to eight (8) feet wide. We submitted the design changes to Sea Grant for their review, and we went over that earlier with Director Dahilig.

This snapshot was taken from the plans, and what we wanted to depict are two (2) things. One (1) that at the road the depth of the path will be approximately a foot and six (6) inches, and towards the *makai* side would be approximately a foot. Now, what is important is this is the new railing that will be installed. The railing will be an integral part of the path itself, meaning that it would be attached to the concrete slab. So if we need to remove it, we will remove everything, including the railing will be coming out. Two (2) reasons. One is had we had to do what is currently there now, we are trying to minimize any impact to the ground in terms of having to dig a bigger footing to attach this wall to the ground, so this eliminates having to do a bigger footing and it also connects it to the path. The other thing, should this area – if what happened in Kekaha occurs in this area, and the path needs to be removed, the State Highways will need to save the road. That is the only corridor or road structure for the island. So they will have to do something like what they needed to do in Kekaha.

So it makes sense to do this, to remove this along with the path, because then the State will have do whatever they need to do to save the road. Construction schedule, this is where we foresee it, and we understand that it is the holiday season. A lot of people will be on the roads from now until after the New Years and so we are looking to start construction early January, targeting January 2nd, when temporary striping will be done on Kūhiō Highway and safety barrels will be installed. Between January 11th and March 29th, the installation of the path will

occur. And between April 1st through April 5th, we believe that the permanent restriping of Kūhiō Highway will happen. That would be the completion of that portion of the project. That is the conclusion of my presentation. I tried to be short and as fast as I can.

Ms. Yukimura: Thank you. Are there any questions of Mr. Rapozo? I want to get into the public testimony as soon as possible. Here, Chair.

Ms. Nakamura: I have a question.

Chair Furfaro: Thank you very much, JoAnn, for filling in and Councilmember Nakamura, you have questions?

Ms. Nakamura: Thank you, Lenny for the presentation. I had a question regarding the State Department of Transportation. At one time they were looking at widening that section of Kūhiō Highway between, I think it is the bridge to the southern terminus of the Bypass Road to add one (1) additional lane. Is that factored into this design?

Mr. L. Rapozo: Yes. I believe that is still in the process. They are going through the 106 process right now.

Ms. Nakamura: Okay.

Mr. L. Rapozo: Yes, we have been working with them in having...they gave us the authority to go within the right-of-way, and we all have been working together with that becoming a four (4) lane corridor.

Ms. Nakamura: And that additional lane can be accommodated in the existing State right-of-way?

Mr. L. Rapozo: Yes. According to State DOT, yes.

Ms. Nakamura: So no additional lands need to be acquired *mauka* of the highway?

Mr. Haigh: It was the existing haul cane road easement, which I believe was originally with DLNR. And that was transferred to, I believe it was transferred State Department of Transportation. So it is in that transportation corridor.

Ms. Nakamura: In the pictures that you showed, do you know how many trees would be removed?

Mr. L. Rapozo: Actually, yes. There will be ten (10) trees removed. It will be replaced with nine (9). The plan is to replace them with Hala and Beach Heliotrope.

Ms. Nakamura: And what is that? What kind of tree?

Mr. L. Rapozo: Hala.

Ms. Nakamura: Hala. Thank you.

Chair Furfaro: Mr. Rapozo, I went to the beach maybe about a half an hour before I then saw JoAnn walking, I counted twenty six (26) trees that were marked. Is that something that you have looked at?

Mr. L. Rapozo: We have looked at it and, in fact we have a plan as to which trees need to be removed in order for us to accomplish our project, and we can send that over to you if you need to see it, exactly which ones.

Chair Furfaro: I still would receive this item because the new posting has to be on some more specifics and I think that the trees, the landscaping will be one of them. Vice Chair Yukimura.

Ms. Yukimura: So the ribbons up now were not put there by you to identify the trees that are to be removed?

Mr. L. Rapozo: No, ma'am.

Ms. Yukimura: The ones under your plan to be removed are nine (9) rather than...

Mr. L. Rapozo: Ten (10).

Ms. Yukimura: Ten (10) rather than the twenty six (26) that the Chair counted. Of the ten (10) that are going to be removed, you are planning to replace those trees with?

Mr. L. Rapozo: Nine (9).

Ms. Yukimura: You are planning to replace nine (9) of them with Heliotrope and Hala trees, which are beach-friendly trees?

Mr. L. Rapozo: Yes.

Ms. Yukimura: Okay. Thank you. May I ask one more?

Chair Furfaro: Yes, go right ahead.

Ms. Yukimura: With the widening of the roadway, there is really no...four (4) lanes, I guess?

Mr. L. Rapozo: Yes.

Ms. Yukimura: Which is in the plans?

Mr. L. Rapozo: Yes.

Ms. Yukimura: There is no real access on the *mauka* side of the highway because the expansion of the highway will take all of that?

Mr. L. Rapozo: Correct.

Ms. Yukimura: In fact, does the proposed multiuse path, will it actually protect the road itself in some way from wave action?

Mr. L. Rapozo:

No.

Mr. Haigh: A little bit of correction on that. It was not originally designed for that. But in some way it was, because we are taking out the existing wall, which was installed, I believe, in the '70s. And if you look at the erosion map, you can kind of (inaudible) that the wall was probably built in response to debris coming up on the highway. Now, when you see debris on the highway, it is been focused at the north end of Wailua Beach and winter surf storms, sometimes we get debris on the north end of the beach. So this wall that is providing protection to the members of the path will also provide a degree of protection. If you look at the picture of the beach, there is a lot of driftwood debris. So if there was a high winter surf action, that wall would help protect the road from that debris?

Ms. Yukimura: And yet, these segments that you say will be ten (10) feet long, they do not affect the hardening?

Mr. L. Rapozo:

No.

Ms. Yukimura:

That affects the ocean currents and so forth.

Mr. L. Rapozo:

Yes.

Ms. Yukimura: Okay. Then I do not know, Mr. Haigh, you might answer this one because people have been talking about alternatives. They want the multiuse path, but they would like it in another location and some suggestions have been for *mauka* of the Coco Palms area, so behind the Coco Palms area. I am told, and could you confirm or refute, that that was looked at and that there are a lot of burials there and OHA, in fact, strongly oppose that *mauka*?

Mr. Haigh: I do not remember them strongly opposing that, but they were involved in many of the discussions. It was reviewed, and there is a lot of historical resources and burials on the *mauka* side of the highway.

Ms. Yukimura:

And the *mauka* side of Coco Palms too?

Mr. Haigh: Yes. Well, you have to get back to – I do not think we have a lot of studies done on the far *mauka* side. But to get back between Kuamo'o Road and Coco Palms, that area has a significant amount of burials.

Ms. Yukimura: To divert from the main highway alignment to go back into the *mauka* side of Coco Palms.

Mr. Haigh: Yes. There are known burials in that place. Now, I do not believe that there have been extensive studies back along the road that goes along the canal, but that was the determination at the time, and this also have a transportation corridor. So what is most appropriate.

Ms. Yukimura:

This is a transportation corridor?

Mr. Haigh: The transportation corridor of Kūhiō Highway. So what is more appropriate to have a bike path than a highway than the beach? Or is it more appropriate to have the highway, the lesser use, and then the beach? And a lot of it was *ke ala hele makalae*, the path along the coast. At the

time the decision was made, there was a lot of input that it is a path that goes along the coast.

Ms. Yukimura: But if there is going to be any damage, it is better to damage the bikeway than the road because that is such an essential conduit.

Mr. Haigh: The edge of the bike path is now going to be eight (8) feet. Basically, from the edge of the road. So if you got erosion up to that point, H.D.O.T. is probably going to have to do something significant to protect the road because this is the only corridor that we have connecting our island, two (2) major population areas of our island. So we would remove our sections as necessary and then H.D.O.T. would have to do what they have to do to protect the road.

Ms. Yukimura: Okay. Other questions? Councilmember -- oh, I am sorry. I am not...

Chair Furfaro: Mr. Kuali'i and then Mr. Bynum.

Mr. Kuali'i: Thank you, Mr. Chair. Aloha, Lenny and Doug, thank you for being here and for your work. So I think when Vice Chair Yukimura was talking about the alternate alignments, one (1) of them was not *mauka* to the point of behind Coco Palms, but just *mauka* of the highway. So I think your only response to that so far was that as a transportation corridor, it makes sense to have highway, path and then beach. From the community's opposition with regards to erosion, staying off the sand, protecting all of the cultural, environmental, just not like touching that at all. The highway is already hardened. You are moving is as close as possible with this current alignment but you are still using a part of the edge of what is a part of the beach covered in vegetation, but it is sand under there. Other than a design preference because of how it looks as far as path, highway, path, and then beach, is there any other reason you did not look at the *mauka* side of the highway because you are talking about the highway shoulder and you could have done the same thing on the other side. No?

Mr. L. Rapozo: Possibly, yes. But also, too, there is a safety factor by crossing the road twice at Kuamo'o and somewhere closer to the Seashell. That was also taken into account.

Mr. Kuali'i: Right.

Mr. L. Rapozo: It seems the best route, because this area here, was disturbed when they made the road. So that was taken into account of what historical properties may have underneath there. Again, because it has been worked upon, that seemed to be the less interest of area of this corridor.

Mr. Kuali'i: The only other thing, then, so when I look at the pictures of the rock wall, and then the red line seems to be right after the wall. I do not know how long that wall is, but it looks like a pretty significant wall. I am surprised to hear that it was built in the '70's because it looks like it is still in really good shape and maybe that is just how rock walls with concrete on them lasts. But that is a State structure then? Who owns that rock wall?

Mr. L. Rapozo: Transportation.

Mr. Kuali'i: Transportation does. It just seems like a waste to remove that entire wall for what seems like inches. How wide is the wall, inches for the path, right? If the path was narrower or if you are restriping the highway anyway – so if the highway could move those inches, then you could make the path on the *mauka* side of the wall and it would be closer to, again, and part of more of the already hardened surface, which is the highway where the white line is and the shoulder of the highway.

Mr. Haigh: The red line is kind of a graphical line, and it is hard to see the distance. But from the *mauka* edge of the wall to the *makai* edge of the path is probably like three (3) feet in some places. We work with D.O.T. and what we are working on is to get the path as far *mauka* as possible. D.O.T. gave us the line. This is as far as you can go, this is our highway, and you cannot go into our highway anymore. We need that highway width. They were flexible and we worked together on it. They have a primary function of having a safe highway and, really, transportation. So this should be part of their primary function too. But sometimes engineers, in their eyes, it is primarily transportation vehicular. So we worked with them and we moved the path as far *mauka* as H.D.O.T. felt was possible to have a safe corridor.

Mr. Kuali'i: And that is taking into consideration the additional lane that is to come in future?

Mr. Haigh: That is correct.

Mr. Kuali'i: Is that point in future any time soon or is it part of the big master plan that costs two hundred million dollars (\$200,000,000.00) that will never get done, because they are planning all of these alternate routes across DHHL Wailua lands with the new bridge.

Mr. Haigh: It is the interim improvements, okay.

Mr. Kuali'i: Short-term fix.

Mr. Haigh: This four (4) lane project would not have happened except for Mayor Baptiste. It was Mayor Baptiste very early in his term, who said we have to do something about this Kapa'a Transportation Corridor. It is killing Kaua'i. It is backing up, people are taking hours to get through Kapa'a Town. We have to do something. He brought us all. He brought in people from all different agencies. We had a retreat where we all sat. And he said, "we are not leaving this room until you guys come up with some ideas." I spent many trips going to Honolulu with Mayor Baptiste, trying to push this project forward, the four (4) lane project. Part of the reason they named the bridge after him is because of the effort he put into this. Since he passed away, there has not been a champion like him pushing the project. D.O.T. is working on the project. They are right now finalizing the 106 process. They are in the MOA stage, I believe, of the 106 process. Then they will have additional permitting requirements to go through. So they are moving forward on that project, and right now 2013/2014 is probably realistic start, late 2013 or early 2014.

Mr. Kuali'i: I would say, too, that the bridge and the restriping and additional lane, that already obviously has made a huge improvement because up in Wailua Homesteads is one of our highest concentrations of residents and people getting over that bridge. Taking the left turn was probably

the biggest concern as far as traffic congestion in that area. Even now the turning lane is not long enough because it does back up on the bridge. Ideally, if that could go longer, it would be even better. The last question has to do with you talked about haul cane road access. Is that immediate *mauka* of the highway then?

Mr. Haigh: Yes. There is a strip that historically has been a haul cane road, I believe.

Mr. Kuali'i: That is private property by the...

Mr. Haigh: No, it is public land.

Mr. Kuali'i: Public land.

Mr. Haigh: Originally, I think it was with DLNR and they did an executive order moving it to H.D.O.T. to use for the four (4) lane project.

Mr. Kuali'i: They sort of cleared some of it to give more of a shoulder. Is there going to be even more for this additional lane or has that all been considered in however many inches they are able to give us to move?

Mr. Haigh: A lot of that clearing work was done to do the archaeological investigation because they did significant archaeological investigations on the *mauka* side of the road.

Mr. Kuali'i: What were the results of that?

Mr. Haigh: There are burials, but not within that strip. They actually did some very deep excavations there, and I have not studied in depth, but my memory is that they did not find significant burials within that corridor there.

Mr. Kuali'i: Thank you. Thank you, Mr. Chair.

Chair Furfaro: Mr. Bynum.

Mr. Bynum: I just want to make sure I got this correct and clarify a few things. Over the last five (5), six (6) years, there has been a couple different iterations, initially a boardwalk on the beach property, and then a decision that you worked with H.D.O.T. Their four (4) lane for the public, that extra lane is going to be on the *mauka* side. So the highway is moving *mauka* to some extent in order to accommodate the additional lane, is that correct? So that allowed D.O.T. – and then on this picture, basically, the new wall will be adjacent to the white line?

Mr. L. Rapozo: The white line.

Mr. Haigh: Approximately two (2) feet from the white line.

Mr. Bynum: So this wall is going to come down, but there will be a new wall, *mauka*?

Mr. Haigh: Yes. In essence, we will be removing the hardened structure from the shoreline. We will be removing a hardened structure from the shoreline and replacing it with a removable structure.

Mr. Bynum: So basically this is an L-shaped structure.

Mr. Haigh: I am not sure. Yes, the new structure.

Mr. L. Rapozo: I think we have it in your book.

Mr. Bynum: Right.

Mr. L. Rapozo: This one here.

Mr. Bynum: So I just wanted to make sure that the wall side is the highway side that is protecting pedestrians is going to move closer to the white line that we see?

Mr. Haigh: Correct.

Mr. Bynum: Then the path is more level. But each of these sections can be picked up and moved?

Mr. L. Rapozo: With a crane, yes.

Mr. Bynum: And that is why Mike said it does not involve shoreline hardening or interfering?

Mr. L. Rapozo: Yes.

Mr. Bynum: When Chip Fletcher was here a few years ago and we were discussing Pono Kai and that path in Pono Kai. That was probably six (6) years ago because the path has been there for five (5) or six (6) years. What he said, which I remember well, was this is just a relatively minor structure as far as structures go. The key thing is that County of Kaua'i will not harden the shoreline in order to protect the path, right? That was like a commitment that County was making. So if the shoreline is threatened, we are not going to harden the shoreline to protect the path. We will move the path, reroute the path, or abandon the path, if necessary, if the shoreline...do you recall those comments five (5) or six (6) years ago?

Mr. Haigh: Vaguely.

Mr. Bynum: Is that our current commitment? Is that why we are doing this modular?

Mr. L. Rapozo: That is exactly right.

Mr. Bynum: That the County of Kaua'i will not harden the shoreline in order to protect the path?

Mr. L. Rapozo: Right.

Mr. Bynum: If it comes to that, we will remove it?

- Mr. L. Rapozo: Yes.
- Mr. Bynum: Thank you.
Chair Furfaro: Any more questions before I go to public testimony? Mr. Rapozo?
- Mr. Rapozo: Doug, did the original SMA permit include the removal of the wall?
- Mr. Haigh: Yes.
- Mr. Rapozo: That was the original plan from the beginning?
- Mr. Haigh: Well, actually it was a supplemental. When we went back and got approval to shift the path off the beach, the boardwalk off the beach, we did go back to Planning with a revised design and it was approved.
- Mr. Rapozo: So the Planning Commission approved it?
How does that work?
- Mr. Haigh: I forget the exact process, but we did go back to the Planning Department with a revised design.
- Mr. Rapozo: But that does not get any public...that just goes to the Department?
- Mr. Haigh: I vaguely remember a public hearing. Vaguely, I remember you being there, but it may have been a different issue. I do not remember exactly.
- Mr. Rapozo: You vaguely remember me being there. If I was there, I would know. I have been there for issues, but not this one. I was not aware. I guess we will submit, Mr. Chair, if the staff could take note that I am just curious when that was approved. I do not believe that was in the original SMA permit. I am not sure what the cost is to remove that wall. Do we have an idea how much it would to remove the wall and put up the new barrier?
- Mr. Haigh: The expense for the path along Wailua Beach is approximately \$1.9 million dollars.
- Mr. Rapozo: But the removal of the wall.
- Mr. Haigh: That includes the removal of the wall.
- Mr. Rapozo: I understand that. I want to know how much to remove it.
- Mr. Haigh: I do not know. I do not have that itemized or memorized.
- Mr. Rapozo: That one (1) stretch right now, you are talking \$1.9 million and that includes the removal?

- Mr. Haigh: That includes the removal of the wall.
- Mr. Rapozo: This new wall that you guys are talking about, is it just those temporary barriers or is it going to be a fixed?
- Mr. Haigh: That is the structure there. It is a concrete structure.
- Mr. Rapozo: Is it mounted? Is it mounted onto or it is it removable?
- Mr. Haigh: Each section is linked together. It will look permanent when it is done. It will look like one (1) structure, but it will be possible to separate and move.
- Mr. Rapozo: I guess the question is, is it anchored?
- Mr. Haigh: Well, it is anchored by gravity.
- Mr. Rapozo: By weight?
- Mr. Haigh: Yes, and then each section is connected together. So we break the connection when we remove a section.
- Mr. Rapozo: That is the question. I would like to see that separate cost of the removal and the relocation of the temporary wall.
- Chair Furfaro: You getting that? Thank you.
- Mr. Rapozo: Thank you.
- Chair Furfaro: Mr. KipuKai and then I am going to go to public testimony.
- Mr. Kualii: Just a really quick follow-up question with regards to the wall. I was looking at the construction schedule and it says January 11th through March 29th install path. It is just an overall install path. But is it logical, then, that the first thing you are going to do is remove the wall on January 11th?
- Mr. Haigh: No.
- Mr. Kualii: No.
- Mr. Haigh: We will be starting at the Kuamo'o intersection and working our way north. Actually, the barriers we will put up are currently planned to do half. So we will put the barriers up and construct about half of it and then relocate the barriers and then do the second half.
- Mr. Kualii: How much of the entire area is wall? Half of it?
- Mr. Haigh: Currently?

Mr. Kualii:

Yes, that you have to remove.

Mr. Haigh:
distance, and that is just my guess.

My guess would be a quarter to a fourth the

Mr. Kualii:

Okay. Thank you.

Mr. Haigh:
sorry about that.

A quarter to a third. I should correct myself

Chair Furfaro: I am going to excuse you, gentlemen. And to the public, I want you to know I will take testimony from now until 12:45. I would like someone from your Office, Lenny, if they could stay close by, or Doug, just to hear the public testimony. You can use our Office in the back, if you would like. I would like to note we are going to call people to testify in the order that they had signed up. I believe we have Dr. Berg first.

There being no objections, the rules were suspended to take public testimony.

Mr. Watanabe:

Yes. Carl Berg followed by Carl Imperado.

Chair Furfaro: You know what, there is a young lady in the audience that came from school. Go ahead Carl. Leilani, and I may ask somebody to read her testimony after Mr. Berg. Carl, you have the floor.

CARL BERG, Doctor: Thank you. I am here today representing the Surfrider Foundation which is a conservation organization nationwide. Our main mission is to maintain clean water, clean beaches, and beach access. It is our feeling that this bike path should not go on the beach. You should not steal any of the beach from public use by hardening that. And that is basically, we think having been out on the site, with the County employees. There is a lot of misinformation is given out there, particularly in the erosion graphs that were shown, that is it study from 1927 to currently. Climate change has hit us already. Any projections based on the past are totally irrelevant. We do not know what went on, for example, between 1975 and 1987. Was that temporary inclusion there for twelve (12) years, and then six (6) months later it was back or did it fill in right away? To build a bike path or multiuse path out of concrete on that beach area with the idea that it is "temporary" and you can take it away, why do you put a bike path in someplace you are not going to be able to use it because you are going to have to move it all the time? You cannot just have a missing link. If one (1) part erodes, the whole thing is gone. It is not just sea level rise that is going to be important with climate change. The main point is that we are going to have more extremes in weather, and they will happen more often. I think the example we should keep in mind is that there was a beautiful boardwalk in Atlantic City for eighty (80) years or more, and it was taken out. Now the scientists predicted that would be taken out by the next climate change event and gave the report to New Jersey and the State about three (3) years ago, but they did not listen to this. So we are going to see more and more extreme events, but even little things, such as changes in the water currents and changes in the wave patterns, are going to change the erosion patterns, which is what happened and which is why we suddenly lost the beach. So I do not think we can count on that erosion pattern that they predicted as being true. It is going to be much different. If erosion occurs up to the edge of that path, they said they will not harden it to save the path. But what the Department of Transportation man said to me is that if it erodes that close to endanger the path,

we will take it down and harden it to save the highway because that is the most important corridor. We are going to have to harden to protect the highway there, a cement structure that is L-shaped one (1) foot deep that is a hardened structure if the waves are crashing up to it.

I do not think that the photographs that were presented of what it looked like on November 16th were really demonstrative because they were taken at low tide. They were not taken at high tide. If you look closely when the waves were way up there and for those who walked the beach recently, there is no question, and you will see pictures, of how badly it has eroded back. The one (1) last thing, I do not particularly – I use the multiuse path. I use it. I enjoy it and think it is a great idea, but I do not think though that we should take our beach away for that. I do not see why we cannot have a six (6) foot wide bike path in that spot and take less away. Keep the bike path on the asphalt. Recently, there has been a lot of painting in the roads in Līhu'e here with the bike path right on the main highways. They did not put up barrier walls, they just painted here and here are the new bike paths and they are approximately this wide. So I do not see the great imposition on multiuse path if they have to walk their bikes that one (1) little stretch of beach. Do they need the luxury of an eight (8) foot wide beachfront path?

I went over extensively the memorandum between Ruby Pap, the Coastal Land Use Agent and I have a totally different interpretation of what she said. You have that. On the bottom of the last – first page she says, “while the recent and previously observed erosion episodes are temporary, similar episodic or event-based erosion events are highly likely to cause management problems for infrastructure problems sited close to the beach in the future.” She is saying that if you put something there, it is going to get washed away and you will have to do something different. I do not see how the County takes this as an interpretation as, “oh, we can.” She says we can build it there. Lastly, \$1.9 million dollars for the removal of that wall and that little stretch seems outrageous. I would recommend that we simply look at keeping the existing bike path on the already asphalt portion of the highway. Thank you.

Chair Furfaro:

Thank you, Carl.

Dr. Berg:

Any questions?

Chair Furfaro:

I will do that. JoAnn, you want the floor?

Ms. Yukimura:

Yes. You mentioned this New Jersey boardwalk that you said lasted eighty (80) years?

Dr. Berg:
Ferris Wheels were.

Or more. Atlantic City, that is where the

Ms. Yukimura:

Right.

Dr. Berg:

Also Fire Island on Long Island had this beautiful boardwalk, and they were all totally washed away.

Ms. Yukimura:
eighty (80) years of use of it.

With Hurricane Sandy? But they had

Dr. Berg:

At least.

Ms. Yukimura:

And it was not hardening?

Mr. Berg: And what would happen was that the water went up – as Ruby Pap recommended, the boardwalks were on piers and the water went up and underneath them.

Ms. Yukimura: That was the first proposal for this multiuse path, but because of the auguring of the pilings into the sand and into the burial areas, that was abandoned.

Dr. Berg: But now there is talking about moving it. Ruby Pap has mentioned that if it is moved back to the highway where they did the archeological surveys and they say there is no burials there, because it is all Rego fill, then why not do that?

Ms. Yukimura: That is what is being proposed now, right, within the highway right-of-way? I do not know where the beach ends and where it begins. It seems like it is basically within the right-of-way, as little of the beach as possible and the alternatives are not possible.

Dr. Berg: Having walked out on that area with Doug Haigh and Lenny, and Ray McCormick, if you were to look at a narrower bike path and put it starting right on that white line, that you would not – you may not have to take out the wall. I think we should look at doing it on a minimal basis as opposed to a broad thing. My basic, where I am coming from is that I do not want to sacrifice any of the beach areas for both erosion control but also for people to use it, for the fishermen to use it, and for us to go on the beach. I do not want to harden it with a concrete path.

Ms. Yukimura: Ruby, I think, is saying that the recommendation or her assessment of the proposed design appears or is one (1) of her – she says it is okay because it is not hardening. So you are disagreeing with her whether it is hardening or not?

Dr. Berg: No, she okayed...look at the pictures. She was recommending this elevated boardwalk. She did not support...

Ms. Yukimura: "As an alternative, we suggest you look into a resilient raised wooden boardwalk," which was the first proposal. For a variety of reasons, it is not feasible.

Dr. Berg: Yes. So that is what she recommended. That is what you have there. I am not speaking for Ruby here. I think she did a wonderful job in her analysis and the way she presented it. I think you, as a Council, should read that closely because I do not think that it agrees with the interpretation that the County Engineers have come up with.

Ms. Yukimura: Well, without having her present, it is hard to know. But my reading is that...

Chair Furfaro: I will be scheduling a new posting when Ruby is here.

Ms. Yukimura: Okay. Thank you. Thank you.

Chair Furfaro: Carl, before you leave, Councilmember Nakamura has a question for you.

Ms. Nakamura: Carl, I just wanted to clarify. The location on the *makai* side of Kūhiō Highway is acceptable if it is a narrow width, if it is reduced further from eight (8) to six (6) feet?

Dr. Berg: What I said is simple. Our Mayor suggested that we keep the bike path on the roadway easement. I think that if you walk out there, you will see from the white line, it has been asphalted already quite a ways. There are no trees growing that close to it. So why can we not just use the shoulder of the road as it is without these extremely expensive alterations and without widening it onto the beach?

Ms. Nakamura: And not put up a barrier between the walkway and the...

Dr. Berg: You can put up a barrier and I am sure the Engineering Department can come up with a barrier that goes there. I suggested to the Department of Transportation that the temporary barriers that they use now, that they put up, would be fine and not very expensive. He said, "well, those are temporary." But the cement slab thing is temporary also. That is part of the confusion is, this temporary or is it not temporary? Because that then also runs into County Ordinances about temporary structures.

Chair Furfaro: Yes. I will let someone read the student Leilani's testimony. I want you to know that I am making an exception here because she sat for several hours. You will have to wait until your name is called. But you may read Leilani's.

SHARON GOODWIN: Okay. Thank you so much. Aloha Councilmembers, all participants. This is from Leilani Josselin, a lineal descendent. "Aloha. I am writing this testimony on behalf of the numerous frustrated kanaka who have followed the issue of path along Wailua Nui Aho'ano for many years now since the inception of this idea. I have attended countless meeting pertaining to the SHPD 401 process profoundly old timers like Uncle Val Ako and his wife, also Uncle Joe Manini have found their way to these meetings hosted by Kimura Enterprise, a company that was hired to do an Environmental Assessment on the entire bike path. It takes a lot of energy from these old timers who live on their own to drive to these meetings that really were a debacle of what we like to call 'checks and balances.' While there are questions at these meetings of what will be found in the area, which these are answers that can be answered by these Kupuna. But their statements are often pushed under a rug or lost in minutes, taken by the organization.

What can be found on just the top layer of Wailua Beach is Aki'aki grass, a native grass which just does not grow anywhere anymore but on beaches at Nualolo Aina, on Na Pali, and Hakiowawa on Kaho'olawe. The Lauhala trees which hold root to the eroding sand and what is left of a beach. Also, there are countless other plants, like naupaka and other plants which are holding root of what is left of the beach like ironwood. Underneath the sand at a level below the waterline tells the story of old kanakas which we people of today cannot imagine. All the *iwi* on Wailua are not of your Hawaiians that you see today. Their tibia bones of some of their legs were roughly the size of their entire leg. Try to envision the size of that

body. These hundreds, if not thousands, of *iwi* sit facing the east to the rising sun in a crouched position, wrapped in white tapa, which is a sign of prestigious burial."

Leilani goes on to say, "I am not against the path. What I am against is the path on Wailua Beach. I, with others, have been a part of meetings which have aided in ideas of alternative routes, like that of the path behind Foodland and between McDonalds and Safeway. Being a part of these meetings, which were not open to the public, I have seen the route of the entire project. From my knowledge, I have been told today that this Council that sits before us may possibly have the power to grant the money for the portion of the path. If that is true, I beg of you to please put these monies to a place that is much better needed. I have seen families or people be arrested. I have seen divorces and even death over this bike path issue. I ask that you not allow this project on this sacred place which is home to a myriad of historical number of articles and heiau. I do not want this decision to be heavy on your hearts. Mahalo Nui, Leilani Josselin."

Chair Furfaro: Thank you for reading that. Could you submit it to the staff? We would like to make a copy.

CARL IMPARATO: I urge the County Council to use every means at your disposal to ensure that common sense and fiscal responsibility determined the location of the Wailua Beach segment of the bike path. Other people are going talk about environmental issues and very important cultural issues. But I want to focus on financial responsibility. Recent photographs show that the shoreline at Wailua Beach has retreated substantially over the past few year to within twelve (12) feet of the edge of the proposed bike path. Commonsense should dictate one (1) should not locate a very expensive County project within a few feet of the waves when the annual variability of the shoreline location could eat up those last few feet in a few seasons. Then, of course, we have other issues like sea level rise. The County would never allow a private citizen or business to build that close to the shoreline. The same standard, or as others have even suggested, a higher standard ought to apply to the County. In fact, no prudent private citizen or business would even decide to spend large sums of money on building within twelve (12) feet of the encroaching waves. Commonsense should also apply to use of taxpayer financed facilities. Now, some people say that the issue has been considered in the past, so no need to look at it again. But that would be irresponsible to ignore new information. Other people maybe imply that because the County already has a SMA permit and does not need new permits, they should go forward. Well, that is like saying that because I already bought lead paint and asbestos before it was made illegal, I should use it now because I have already got it. There is really no compelling reason to rush to judgment. So now there is the time before money is spent, before concrete is put down, to reassess an old decision in light of new information. Before money is spent, before trees are uprooted, before the construction process sets in motion, the loss, the irreversible loss, of what is left of Wailua Beach by removing parts of the vegetation that do hold that sand together.

I would like to also say there are some alternatives that I believe have not been thoroughly explored and maybe because it was not a compelling need to do so prior to the erosion events. For example, when one looks at what I believe to be the current proposals for Kūhiō Highway, the four (4) lane approach there. If there are four (4) eleven (11) foot wide traffic lanes proposed there, if those lanes were reduced nine and a half (9.5) feet. Take one and a half (1.5) feet out of each of these four (4) lanes, and that has been done in other areas. That is a design exception

that is required. You would pick up six (6) feet. You take one (1) foot off each of the two (2) shoulders, you have got your eight (8) feet. So by doing something creative in terms of design exemptions in this low speed corridor, there is a possibility of picking up six (6) to eight (8) feet of width, which says that the you can basically put the bike path – the *makai* edge of the bike path where the *makai* edge of the asphalt is. So I think we should be taking a time out and rather than talking about building on January 2nd, look at alternatives.

In conclusion, I believe that it is irresponsible fiscally for the County to build a bike path in a location that does not even meet a minimal standard from being safe from erosion for at least twenty (20) to thirty (30) years. That means being safe not just on the average; it means being safe in terms of every peak event that occurs. You do not design for the average; you design for the worst case. So I am asking that the Council to do whatever you can, whether it is through a Resolution or withholding financing, or whatever you can do, to see that the Wailua Beach portion of the bike path is reevaluated prior to digging anything out over there, ensure that the bike path is sited base on common sense and fiscal prudence rather than outdated information or bureaucratic inertia. I thank you for your attention.

Chair Furfaro:

Councilmember Yukimura.

Ms. Yukimura:

Carl, thank you for your testimony. Your suggestion of an alternative, can you repeat that again?

Mr. Imparato:

Right. What I was saying is that the proposed Kūhiō Highway expansion to four (4) lanes has four (4) lanes, each lane is designed for eleven (11) foot width. If you made those lanes one and a half (1.5) narrower, making them nine and a half (9.5) feet wide, which is not current United States Highway standards, but design exceptions are granted on many highways in Kaua'i. Kūhiō Highway in the Hanalei area is nine (9) to ten (10) feet wide. If you take a foot and a half out of each of those four (4) lanes, you picked up six (6) feet of width, if you say the shoulders do not have to be that wide. The shoulders are not wide on the Wailua Bridge. If you basically say, "well, we are going to have narrow shoulders in that part of the corridor as well," you might pick up another foot or two (2). So what I am saying is, within the current width of the highway proposed project, you can make the lanes narrower, the shoulder narrower, and you can put the bike path possibly right there on the *makai* side of the highway but not using up any of that sand.

Ms. Yukimura:

And not having a wall?

Mr. Imparato:

And you could leave that wall.

Ms. Yukimura:

Because when I was walking there yesterday, the cars were not going slowly. They were really speeding and the trucks nowadays are so wide, I am not sure that your alternative you be safe.

Mr. Imparato:

There are portions of Kūhiō Highway – actually, I have to talk to D.O.T., even on the old Death Alley section in that direction that are in the nine (9) to ten (10) feet range. I am just saying...

Ms. Yukimura:

Well, we do not want to...

Mr. Imparato: No, I understand that, and I should have not used that term. But the point being that that is a fifty mile per hour (50 mph) corridor or has been in the past. Here you have a twenty five mile per hour (25 mph) corridor and the eight (8) foot wide incarnation of the bicycle path includes a wall. So I am not saying, if I understood you correctly, I am not saying that you do not have a wall there. You take eight (8) feet of the *makai* section of the highway, and within that eight (8) feet you have your bicycle lane and your wall. You do have to have a wall separating the bike path from the traffic.

Ms. Yukimura: Okay. Thank you very much.

Chair Furfaro: Thank you, Carl. Question, Councilmember Nakamura?

Ms. Nakamura: So, Carl, basically you would be okay with the current – with the alignment in that general location, but just keep it onto the State right-of-way, do not encroach on the sand of the beach?

Mr. Imparato: I think we need to be more precise about that because the State right-of-way includes sand. The idea is...

Ms. Nakamura: The paved portion.

Mr. Imparato: The existing pavement. Right.

Ms. Goodwin: I oppose the bike path as planned on Wailua Beach. To me, it is sacred ground and the final resting place of countless *iwi*, Kupuna, bones of the ancestors. Many Kanakamaole have explained to me their profound concerns over digging and unearthing bones. The bones which the Hawaiians believe contain the spirit of that once human. I believe these people – and I feel it is the responsibility of our community and our Government, especially elected officials like yourselves, to preserve and protect a sacred site and the *iwi* in its place. Another compelling reason to keep the bike path off the beach is right there for all of us to see, or to try to remember what we once saw because the beach is shrinking. The amount of erosion that has taken place since the abutments were placed deep in the river for the bridge has been enormous. I do not believe anything is going to bring back the wide swath of beach that the Kauaians once enjoyed, or the trees that simply fell into the ocean one (1), by one (1), by one (1), by one (1), by one (1), because of development of our bridge. And what about Mapuahone heiau that stands on the beach, in the middle of Wailua? Will the Mapuahone heiau be knocked down, cemented over by the County workers and forgotten by the bikers riding over it daily? That would just simply be another affront to the Hawaiian culture, a culture that I help to preserve. I have heard some bicyclists declare that it will be with pleasure that they ride the bike path at Wailua Beach. But as I weigh someone's pleasure and another person's feelings of deep loss in their belief system, I know what I have to choose to save. Thank you for listening.

Chair Furfaro: Mahalo. Thank you. One (1) moment please. We have a question from Mr. Chang.

Mr. Chang: A couple of questions, so number one (1), what heiau are you making reference to? Is there a heiau underneath the sand?

Ms. Goodwin: Yes. The rock wall comes like this from the Shell, not used Shell Restaurant and then the rock wall comes from the south, you know, where the bike path – Kuamo'o is. Then right where the rock wall – there is no rock wall. Well, actually there is the rock wall but the heiau is right over it. And there is a sign on a tree.

Mr. Chang: So there is a heiau right on Wailua Beach?
So the bike path will go directly over the heiau?

Ms. Goodwin: Well, if they are going to take down that existing rock wall as they are talking about, they are going to encroach into the heiau, for sure.

Mr. Chang: Okay. Also, when you talk about the trees, the trees that were – you said a couple of trees were taken?

Ms. Goodwin: Well, those are trees that were – did you know where the volleyball court was?

Mr. Chang: Yes.

Ms. Goodwin: They were south of the volleyball court.
Those trees are all disappeared.

Mr. Chang: And those trees disappeared not from the waves. The trees disappeared because of the river.

Ms. Goodwin: Because of the erosion.

Mr. Chang: Because of the river.

Ms. Goodwin: Well, the water began to encroach, and I am not sure if the water started to encroach because of the river or just because of the wave action of the beach.

Mr. Chang: I believe I understand what you are talking about, and I think sometime last winter, about last winter, the river – see, right now the river is going straight out. So what happened was I believe they usually drain the river mouth when the river turns north. So what had happened is the river mouth turned north. When it turned north, it was a river mouth that took those three (3) big ironwood trees.

Ms. Goodwin: I think you are right.

Mr. Chang: So what happened was when the river diverted north and in other words, a sandbar blocked the area, and it just carved its way naturally out north and that is what actually took down the trees, not the waves. It was the river mouth diversion that headed up north. So I know which trees you are talking about because I think three of them fall in. Also, you mentioned about the beach erosion. But you know that the beach is filling out right now, right?

Ms. Goodwin: Well, that is what was said by the gentlemen sitting here.

Mr. Chang: Have you been to the beach lately?

Ms. Goodwin: Yes, just the other day when you showed up.

Mr. Chang: Oh yes, I did show up. Yes. I was trying to be inconspicuous. What I would like to say is in between like where the wall is now and at the corner... you guys were by the Shell Restaurant?

Ms. Goodwin: Yes, we walked the whole way.

Mr. Chang: By the Kamani tree. I met your husband halfway. So from the Kamani tree to the wall, are you familiar with that ironwood tree? It is a stripped down, naked ironwood tree that is leaning? It is halfway in between where you and I were?

Ms. Goodwin: I think I am.

Mr. Chang: If you look at that tree and that is something that everybody should realize. If you look at that tree on August 30th, Thursday, the same day we celebrated the 100th Anniversary of the Hanalei Bridge, the water was right at that tree level, ready to fall in. If, when you go back to Wailua and you look at the tree right now, there is at least twenty (20) plus feet of sand that is now stretching out towards the ocean. I cannot tell you whether it was high tide or low tide. Dr. Berg was mentioning the pictures and the tide. But you can see that the sand is replenishing. You can really see that because even where the volleyball net was at, if you look at the parking lot to the ocean now, there are over a hundred (100) – I beg your pardon. There is over sixty (60) feet of sand and from the bridge, the river mouth to the ocean, there is a hundred (100) feet of sand. So I am just hoping that when the river mouth does its course through nature, I think it will replenish. Also, if you look at Wailua Beach off the shore break now, you notice there are waves that are breaking that normally does not break in that area. That is because there is a sandbar. So the next, hopefully, big east swell that we get, more and more sand can replenish and it is replenishing. I think quicker than Mother Nature had expected. But when you go there, you will see that it has expanded over twenty (20) feet, and that was from August 3rd, so that is just three (3) short months ago.

Ms. Goodwin: Did someone not just bring up the idea that maybe that picture was taken at the...

Mr. Chang: High tide.

Ms. Goodwin: Low tide, low watermark.

Mr. Chang: But in reference to the erosion, I think it is important to let people know that the sand is coming back. And if it is going to continue, I do not know. But it is, for the record, coming back.

Chair Furfaro: Councilmember Yukimura.

Ms. Yukimura: Sharon, thank you for your eloquent testimony. I hear and honor your concern about not going over the *iwi*. But in the presentation, they did show in the presentation that the archaeological survey

showed no *iwi* in the alignment that they are looking at. So is that area okay, in your mind, for the multiuse path?

Ms. Goodwin:

I do not want to see a bike path on the beach.

Ms. Yukimura:

All right. Thank you.

JAMES ALALEM: My spiritual name was Ko'olu. It was given to me in the darkness of the night. I am here to represent the spirit of the spirit, our ancient ones that nobody talks about. They need to be heard today. This is the words that they spoke to me this morning at 1:00 in the morning when I was woken up. It says, "I am here for the spirits of the spirits of our ancestors, stop building upon our fallen ones, that means all of Kaua'i, because terrible things are going to happen. Everything is not *pono* right now. Everything is unbalanced. Kaua'i must be Kaua'i. Kaua'i must be Kaua'i. Many offspring for generations to come about will carry the darkness and burden for what is done here today as the bike path proceeds. As the people suffer, so will you all the days of your life, as surely sun rises, sun sets, morning rises and the morning sets, the moon rises and the moon sets. You are all told for if you continue this *unpononess*, unrighteousness, darkness shall fall upon Kaua'i and all of those that try to make a home and have disrespect for our *'aina*, for our people and now for our *Kupuna*. Without the old ones, there are no new ones. Without the past, there is no future."

In all the meetings that I have attended, the 106 – Department of Transportation, all it is, is only formalities and accountability to go ahead with what they want to do, because our people are not heard. Our people cries are not heard. Our *Kupuna's* cries are not heard. So now the *Kupuna* get to see, the *Kupuna* got heavy upon my lap as I hold him in my lap today. So this is now the people that I release to you as I speak to them. They get to see now – to see actually what is going on, because they wanted to come. I did not want to come. They spoke to me this morning and I woke up. I did not want to mention my spiritual name was given to me, but they told me now is the time for speak it. Now is the time to keep the words *pono*.

Chair Furfaro:

For those of you in the audience, we are going to go to 12:45. But I want to let you know that when we come back, we have four (4) Public Hearings scheduled for Bill No. 2454, and 2455, which is Federal Reserve – this is Federal revenues for our reimbursements for the flood damage. Then we have a Bill No. 2456, Teen Court. Then we have Bill No. 2457. These are bills that by Charter we need to state specific times. After that, we also will have Kukuiolono deferred for Civil Defense until December 19th. We have a Housing presentation from people traveling from Honolulu. So I do want to let you know that when we break for lunch and we go into these other things, we probably will not start up again until about 2:15. Mr. Mickens, you have the floor

GLENN MICKENS:

I know the agenda item for 448 is regarding the erosion problem by the Wailua Beach area. But at the Council meeting two (2) weeks ago, other areas of erosion were brought up that will impact this path. So hopefully we can address these as well as the shoreline setback that was brought up today and the sand replenishment for hurricanes and other issues. At that meeting both Mel and KipuKai made extremely important observations about problems with this path, not only show the absurdity of putting the path on a boardwalk in the sand which would now be in the ocean, but Kipukai pointed out two (2) other areas that present the same problems that have never been addressed – fully addressed.

One (1), Akai Road and the path in front of Pono Kai. Remember the history of this, in 2006 the same method of putting the path on the sand in front of the sea of the golf course was laughed down and was vetoed to keep from taking part of the golf course away for the path. There was even suggested that a tunnel be dug under the golf course for the path to get to the boardwalk on the sand. That, too, was (inaudible) vetoed. Even the present plan to make the path removable for me is idiotic, as we cannot even maintain when we have now, alone move the path every time is there high surf or a storm.

Chip Fletcher once told this Council that sat here and told this Council that hardening the shoreline was a no-no. But in the wisdom or is it the insanity of the Administration and some members of this Council, we continue to violate that wise advice. Our Native Hawaiians have continually told this Council and the Administration that the Wailua Beach area is one (1) of their most sacred and cultural areas on Kaua'i and do not want this path to go there. The sentiments of the public you heard today unanimously oppose this path on or near the sand, so why even go there? The roadblocks and obstacles keep coming up with trying to keep this path along the coast and planning and the time spent is costing the taxpayers a lot of money. Remember that piece of land that we were going acquire along Papaloa Road that could cost a minimal amount of money. Thanks to Mel, we found out was going to cost (\$439,000.00), and I still do not know what the outcome of that was. The last I heard was we were going to remove the rock wall along Wailua Beach that Joe Rosa helped build to prohibit the high tides and storm waters from flooding the Kūhiō Highway and Coco Palms. We are removing it to keep the path in the same spot that it was in. But then it will be even more prone to be washed away with the wall gone. We had hours and hours of meetings about how Pono Kai seawall was illegally built; it will probably have to be removed. Joe Rosa can better expand on that issue. But, again, the path besides that wall will be just a prone to falling into the ocean as was the one (1) programmed to be built at the Wailua Beach. It has taken us ten (10) years and \$34.29 million dollars to build six (6) miles of this path by their figures and an obscene amount of \$5.2 million dollar a mile when our highways only cost (\$250,000.00) a mile to repave with the twenty (20) feet and not the ten (10).

Is there not something seriously wrong about this that needs investigating? Why is the public not being told the real facts about his path? Why was no survey ever made to determine the extent of uses that the path must have? Why was no definitive plan made for the route the path would take? Why was no reliable estimate made for the cost of the project and acquiring or accessing non-County owned property along the way? Why was no systematic study done of the legal requirements that needed to be met? Why was no estimate made as to the cost to maintain the path upon its completion? Why no serious evaluation ever made to determine for the people of the County whether they wanted it or not? These are all questions that the learned Walter Lewis has asked with no replies. I am sure you read it in his column. This path will cost more than \$120,000,000.00 if ever finished. Maintenance and security has not even been factored in as yet. Do the people not deserve to know why a project like this that will never take vehicles off the roads is being pushed so hard by a few people, and the propaganda and not facts is trying to convince the people it is something that it is not. Bike paths in certain areas are fine. I have no problem with them. If they are affordable and benefit everyone that pays for them, build them. But this path was ill-planned from the get-go, and I will continue to oppose it. Finally, with all due respect to my friend Chair Furfaro, he might want to recuse himself from voting on any issue regarding this path because, as he so often said, his daughter was the Lead Designer of this

path, unless there is an appearance of a conflict when he votes. Other members of Council have recused themselves when any conflict appears, so I would ask that Jay do the same thing.

Chair Furfaro: Let me clarify that for you Glenn. Let us clarify that.

Mr. Mickens: Certainly.

Chair Furfaro: My family is part Native Hawaiian, okay. My daughter that you referred to is a Land Asset Manager for Kamehameha School. For the segment from Keālia to the entrance of Kapa'a town, she as a Planner for Wilson Okamoto, was the investigator that documented the sense of place for the name of the point and the cultural sensitivity to the area below Mahelona. She was one (1) of three (3) that bid on the design. Their team won the design by the overlook and so forth. They were not awarded anything more than the award for the design. They did not participate in the construction. They did not participate in any other item dealing with the actual construction. They only bid on the concept, place name, historical, and cultural research, okay? Even though my family is part Hawaiian, I am very proud of their stewardship, and I see no reason, no reason to have to recuse myself from anything. I would suggest that you pursue another avenue to get me to recuse myself.

Mr. Mickens: Well, I obviously do not insinuate that you do, Jay. I am only saying that there is the appearance that a possibility could be there. If that were my daughter or my son that had something to do with it, I am going to go along with anything that they were part of, obviously.

Chair Furfaro: I am very touched by your concern. My mother's side were Johnson and Pali from Wai'oli. My wife's side, we are Kauimoi and Kupihea from Wainiha.

Mr. Mickens: I understand. Thank you, Jay.

Ms. Yukimura: Glenn, I just want to say that we are talking about this segment of the highway, and Council Chair's daughter had nothing to do with this segment which is on the agenda. My question is what did you say the per-mile cost of a highway was?

Mr. Mickens: \$250,000.00 for a twenty (20) foot wide one and half inch repaving.

Ms. Yukimura: Repaving is very different than construction, and I hope you are aware that less than two (2) miles of road that was widened cost 40 million dollars from Līhu'e to KCC.

Mr. Mickens: To alleviate traffic, JoAnn.

Ms. Yukimura: When we talk about building highways, that is 20 million dollars a mile.

Mr. Mickens: Yes. But to resurface that road is still only \$250,000.00 a mile. This is a ten (10) foot wide...

Chair Furfaro: Thank you, Glenn. Thank you very much. We have a lot of people that want to testify, and I hope you take my feedback constructively.

KEN TAYLOR: I know that you saw these pictures earlier today, but I do not know that the viewing audience really got a good look at them. I am concerned about the path being in this area for a number of reasons. But I think Carl Berg earlier raised the real issues of concern, that even though staff has looked at things back to 1927, I believe it was, the reality is that that history is just that, history. What we are faced with today with climate change is going to change the future drastically. That is what we will have to look at, and we need to plan accordingly. I just think since there is one (1), an alternative using the cane haul road behind Coco Palms, that it makes no sense to continue arguing over this. Will this thing get washed out of being where it is planned now or should we bite the bullet, make the right decision, and put in the background?

As one who enjoys the path and enjoys riding my bike on the path, walking on the path, I ask you this question, if you were walking or riding on the path, would you rather be there with the cars zooming by or would you be more interested in moving down through the grove of coconut trees in the back where you have a unique experience? There is no place on the path that gives you that experience of meandering down through the grove of coconuts? Ray McCormick from the Department of Transportation has indicated that there is adequate space along Kuamo'o Road to get from the cane haul road back down across the highway and across there at the signal. They are putting a new signal in at the intersection at Kintaros, which can come across the highway, get back up behind Coco Palms, and then move back down Kuamo'o Road and across the highway and back. I do not see any reason in the world why that is not a good plan. We have heard that further up when we get back out of Lydgate, that the path is not going to be on the ocean side along the golf course. We are going to go back to the highway side. So if we do not have to be on the beach on the ocean side of the golf course, what is the big deal for these two (2) three (3) blocks and get it back where it belongs. It is safe and out of way of any future storms or anything that could possibly happen? So I think that it is imperative to make the right decisions now and put the money into putting the bike path back where it was. That was one (1) of the alternatives that was looked at, and it should be considered, in my mind, the primary reason.

Carl has some interesting ideas of narrowing things down, and that is interesting. But I think that probably getting involved in State decision-making processes that it might take way too long. I just ask you this one (1) last comment. It is nice to have the path be continuous, contiguous. I do not know that in the rules and regulations of the State or Federal activities reference to this path that there is any requirement that says it has to be contiguous. If there is, I would like you all to show it to me because I do not think it is there. So put the path behind Coco Palms where it belongs and let us move on with it. Thank you.

Chair Furfaro: Thank you, Ken. I will try and research that question for you. To the audience, it is now time for us to take a break. We are required to give our staff a full hour. As I pointed out earlier, we have Public Hearings when we come back at a stated time and we have a Housing Bill to hear. So please note I do not think we will reconvene this item until at least after 2:15.

There being no objections, the Council recessed at 12:45 p.m.

There being no objections, the meeting was called back to order at 1:53 p.m., and proceeded as follows:

There being no objections, Bill No. 2451, Draft 1 was taken out of order.

Chair Furfaro: I believe now we are going to go into a previously earmarked time for Housing. I would like to give the floor to Councilmember Nakamura.

Ms. Nakamura: Thank you, Chair. I just wanted to state for the record that I am recusing myself from this item on the agenda because my husband's law firm provides legal services to the Applicant.

Chair Furfaro: Let us let the record reflect the recusal.

Ms. Nakamura recused herself from Bill No. 2451, Draft 1.

Mr. Topenio: So noted.

Chair Furfaro: For Councilmember Yukimura, I believe we were having some individuals here, and I am not familiar with all the individuals who have come here, so I will turn over the meeting to you on this item

Ms. Yukimura: Thank you, Mr. Chair. I do not know that we have any additional testimony, do we, Kamuela or Makani?

Chair Furfaro: Vice Chair, maybe we should get a motion to approve.

Bill No. 2451, Draft 1 – A BILL FOR AN ORDINANCE AMENDING ZONING CONDITIONS IN ORDINANCE NO. PM-175-88, RELATING TO ZONING DESIGNATION IN PRINCEVILLE, KAUAI (Princeville SC Development, LLC, Applicant): Mr. Bynum moved for adoption Bill No. 2451, Draft 1, on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Mr. Chang.

Ms. Yukimura: So there is a motion and second to approve the Bill. There is an amendment that is being circulated with my name on it, so I may turn the gavel back to you, Chair in a moment.

Chair Furfaro: That is fine.

Ms. Yukimura: I do not think we had any particular testimony at this time but if there are questions about the Amendment, the people are here to speak about it. If I may, may I pass the gavel back to you so that I can speak as a Committee Chair. Thank you.

Chair Furfaro: Thank you. When we pass out this Amendment, I would like to hear from the Applicant as well as from the Housing Department. I would also remind everybody that I was asking for some type of a description. Is that in the attachment with your Amendment?

Ms. Yukimura: Yes.

Chair Furfaro: That handles that piece. May I ask for the Housing Director to come up?

There being no objections, the rules were suspended.

Ms. Yukimura: He can introduce the others.

Chair Furfaro: Yes. My first question to the Housing Director is, have you seen this Amendment?

KAMUELA COBB-ADAMS, Housing Director: Yes, I have seen this Amendment.

Chair Furfaro: Okay. Do you have commentary at this point? Could you ask the others to introduce themselves as well?

MAKANI MAEVA, Director of the Vitus Group: I am the Director of the Vitus Group, and we are the Affordable Housing Developer.

Chair Furfaro: Okay.

JOELLE CHIU, Project Manager of the Vitus Group: Good morning, my name is Joelle Chiu. I am the Project Manager of the Vitus Group.

Chair Furfaro: You said your name is Joelle?

Ms. Chiu: Yes.

Chair Furfaro: Thank you. Sir, you have the floor.

Mr. Cobb-Adams: Thank you. The changes that were made...we support all of the changes. There might be one suggestion. We would request, if it is possible, to change on Page 3, Item 3 (a), where it is highlighted and says, "consistent with applicable Federal and State of Hawai'i Laws." We support requirements because it gives a broader spectrum of what the State like Hawai'i Housing Finance and Development Corporation (H.H.F.D.C.)...there are laws. H.H.F.D.C. has Admin rules to carry out these laws. It is a broader word or term that I would prefer that is not restricted to just the laws of the State of the requirements. Other than that, we fully support everything. We can also live with laws if we have to. The other thing is that I also want to make a comment. This has been a great effort and a cooperative effort. It is everybody's positive work. We focus on the things that we could agree upon to get this thing done, which is good. I think that is a positive thing. Everybody was adaptable in this situation. We really support this item. Like you said, "That is *manini*. It was a small change." If there was a wish, and we could change one thing, that would be it. Other than that, it is a great Amendment and we support it fully.

Chair Furfaro: Okay. I do appreciate your comments. Obviously, in any negotiation, you find the things you can agree upon first. Then you negotiate outwards. But I am going to give this floor to Committee Chairwoman Yukimura.

Ms. Yukimura: Makani wants to say something too. You want to go ahead? Chair, is that fine?

Ms. Maeva: Thank you. We have two (2) comments. This is really because we are appreciative of all of the work that went into this. We have been going back and forth about how to address the concerns of the County Council, how to address the programs set up by the County Housing Agency, and how to also make sure that we are not inadvertently violating any future financing programs, perhaps resulting in nothing getting built as we had crafted. We have all been trying to be sensitive to that. That is what I am thinking about when I am making these two (2) comments. My first comment would be to page 4 and that is relative to the priorities description. In the middle of the page, roman numeral III, I think that is a section that we should also add the language that we added in the previous section that was to the extent consistent with applicable Federal and State of Hawai'i requirements. I think you should add that there because it is within the priorities set by K.C.H.A. But I think just to be clear, there are some additional Federal overlays that we need to address.

My second comment would be in that same section, Priority C, and I recognize that we are trying to provide workforce housing but it has... after our Council reviewed it, his question was, "What if you are not an employee? What if you are unemployed? What if you are retired? What if you have Section 8?" Here, we are giving priority to only preferences to employees. I understand that, but what if you are a retired former employee of Princeville? How would we provide housing for you? Would that make you ineligible? Or you would not be a part of the priorities. Priorities A, B, and C really talk about employees. What about former employees? What about the unemployed? What about somebody on disability or somebody who has social security who lives in the Princeville area?

Chair Furfaro: We appreciate your feedback. I will be planning to take a short recess to look at that verbiage. We have had similar verbiage in the Kukui'ula workforce and some priorities so maybe we can look ahead. But in five (5) minutes, we need to take a tape change. We might be doing that. Go right ahead.

Ms. Yukimura: Okay. Thank you, Chair. I want to say that we were talking until 4:30 yesterday afternoon. Makani was available by phone. I appreciate that last-minute change. It is when we put it all together and when we look at it again. I think it is a mutual intention to make this workable for all parties with the ultimate goal of having those units built and filled by people who need affordable housing consistent with the intention of this ordinance. It looks like we need a little bit more time, but I think those changes, certainly the first one suggested by Makani, is easy to make. The second one, Mona is here. She has been part of the team. The original Ordinance was written for Employee Housing. We have updated it with the Smart Growth intention of saying it should be Employee Housing. It was Employee Housing for employees who worked in Princeville. We have tried to keep that, and we have been told that we can do that. If we limit residence geographically, that actually is a little bit more sensitive legally than to limit to employees in the area. I think set within the priorities of K.C.H.A. might allow Housing to make some accommodation for some of the others. I must say that this will be prime housing in a prime area, and we are concerned about non-residents and other people who may not be employees coming to live in a nice affordable place. We are trying to draw those lines very carefully to achieve the purposes of the original law and to achieve Smart Growth purposes as well.

Ms. Maeva: If we may, I think we could just add the language, "to the extent allowed by the Federal regulations."

Ms. Yukimura: We probably will get there. Add it either at the top or at the bottom, overlying.

Chair Furfaro: I do want to note, I would like to take a 10-minute break and get the verbiage correct. This is the last day of this current Council, and I would really like to get this Housing piece to be closed today with this current Council, so would you be okay with a recess?

Ms. Yukimura: Yes, and we share your sense of urgency because the application for the Affordable Housing Tax credits are early next year, and there is work to be done between that application process and today. The vision is that Vitus Group could break ground on Housing in 2014.

Ms. Maeva: Right.

Ms. Yukimura: Thank you.

Chair Furfaro: We are going to take a ten (10) minute recess. We are in recess.

There being no objections, the Council recessed at 2:05 p.m.

The Council reconvened at 2:15 p.m., and proceeded as follows:

Chair Furfaro: Okay. Thank you everyone. The tape change has been taken care of. We have amendments that have been massaged.

Ms. Yukimura: Yes.

Chair Furfaro: Okay. Let me give you the floor.

Ms. Yukimura moved to amend Bill No. 2451, Draft 1, as circulated, which is attached hereto as Attachment 1, seconded by Mr. Kualii.

Ms. Yukimura: You have the amendments before you. We have the amendments by Makani and Joelle and Vitus. Unless there are any questions, I think we would be ready for a vote on the amendment.

Chair Furfaro: This amendment also shows Exhibit B, which is the map of the location and the narrative references the exact acreage that this piece is dealing with. I will be supporting this amendment.

Ms. Yukimura: I guess we are ready for a vote, Chair.

Chair Furfaro: I would like to take a roll call vote on the amendment, Mr. Clerk.

The motion to approve Bill No. 2451, Draft 1, as amended, was then put, and carried by the following vote:

FOR AMENDMENT:	Bynum, Chang, Kualii, Rapozo	
	Yukimura, Furfaro	TOTAL - 6,
AGAINST AMENDMENT:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0,

RECUSED & NOT VOTING: Nakamura

TOTAL – 1.

Chair Furfaro: 6-0 on the amendment. Now, before we go to the main motion, as amended, let me give you the floor, Vice Chair Yukimura.

Ms. Yukimura: Thank you, I would like to make a few comments. We are taking an old zoning ordinance with an unfulfilled promise for affordable employee housing in Princeville and forging a public-private partnership to produce, maintain, and manage quality permanently affordable employee housing in an area of Kaua'i where there is such a great need for housing. I would like to thank the Housing Director, Kamuela Cobb-Adams, Gary Mackler and the rest of the Housing Staff and Mona Clark from our County Attorney's Office, Makani and Joelle, and Galen Nakamura, and Laurel Loo on behalf of Vitus, and thank Ginger Grinpas and Aida Okasaki of Council staff for all the hard work, creative thinking, real commitment of time and attention to work on this rather complicated Bill, because it has a long-term vision that will be unfolding for a hundred (100) years. I just want to say, we were all united in the vision of affordable employee housing. If all goes well, we hope to see the start of construction in 2014. It is a very exciting thought to think that we will have some affordable housing in Princeville. So I want to thank the Councilmembers for your thoughtful consideration of this Bill and all who helped to bring us to this point.

Chair Furfaro:

Mr. Bynum.

Mr. Bynum: I just want to echo everything that you just said and thank Councilmember Yukimura for her leadership, her diligence, and her stridency in this instance, a very positive thing. I did not have anything to do with this other than getting updates from the Housing Agency and from Councilmember Yukimura. I could not be more pleased. This is the kind of collaborative spirit, focusing on win-win that makes me excited to be in government. Thank you all.

Chair Furfaro:

Mr. Chang.

Mr. Chang: Chairman, thank you. I do want to also echo everything that Vice Chair had mentioned with all the players involved. Vice Chair, I specifically and especially want to thank you for your diligence and your hard work. We all know the history and we all know your desire and your love for affordable housing. I think this is going to be an exciting part for the North Shore and especially for the employees. As I stated last week, so many have the opportunity to work overtime or extra hours, but it is so difficult when people have to drive. You may think it is a short distance from Kapa'a, but there are so many people from the greater western part of Kaua'i or the South Shore that actually has to drive up to Princeville or vice versa driving out toward PMRF. I really believe that in addition to picking up extra hours, I think this also affords people the opportunity to get part-time jobs because you are so close, and you are saving on gas that you may be able to walk to a part-time job. You certainly can enjoy the lifestyle of the North Shore for a lot of residents who cannot take the time to even enjoy the beaches or the parks or just the downtown Hanalei or Princeville. Being that this will now be so close to many employment areas, obviously there is a health factor when people can walk and utilize the sidewalks, bike paths, et cetera. It is a very, very an exciting time and we look forward to seeing people being employed and building houses, everybody else there. Again, Vice Chair, thank you and thank you to the players that made this a very exciting part of the future for the Kaua'i. Thank you.

Chair Furfaro: Any other members before I speak?
Mr. Kualii'i.

Mr. Kualii'i: Thank you, Mr. Chair. Just very briefly, I too wanted to join fellow Councilmembers in thanking everyone involved and thanking our Vice Chair. When the time comes, and we are looking for the actual families to live in the housing, that we do our best to find those families that are in most need, in best need, and the employees. I think it is going to be a really good thing. Thank you, Mr. Chair.

Chair Furfaro: Vice Chair Yukimura.

Ms. Yukimura: Councilmember Chang just made me think of something. In our discussions leading up to the amendments that we have made, we all talked about including in our efforts to provide affordable housing the goal of lowering the cost of living for families so that it is not just a matter of the rent, but it is also a matter of the cost of energy and electricity. It is also the cost of driving to work and to other places that you need to get. I know that Makani and Joelle are committed to those aspects as well. The fact that people can live close to work will help to drop the cost of transportation. So there is a lot of wins in this. I just wanted to point out that lowering the cost of living is part of all of this. Thank you.

Chair Furfaro: Before I call for the roll call vote, I want first want to send my congratulations to Vice Chair Yukimura and Chairperson of the Housing Committee. Your diligence and your focus on this has brought a parcel to the point that we can actually see some additional affordable housing on the North Shore, as well as the fact that 44 new neighbors, because this is right across the street from my wife's family home. I also want to point out that this also allows us to move forward on the next phase of the shopping complex. These housing units are within shopping reach, within financial institutions, within walking distance to Prince Albert Park for the families. It is working distance to the County Transportation and Bus System. So it is certainly an ideal location, and I am very pleased to be where we are at with this and I will be supporting it. So I will be calling a roll call vote, if I can, please?

Mr. Rapozo: Mr. Chair, just a question. You mentioned
forty-four (44) units?

Chair Furfaro: Yes, I think that is right.

Mr. Rapozo: I just read that it is eighty-eight (88).

Chair Furfaro: The complex question on that was answered earlier, because of the ability to go to the lower-tiered structure, the fact of the matter these two-bedroom, one-bath...one-bedroom, one-bath units can be dropped down to forty-four (44) units.

Mr. Rapozo: Okay. Got it. Thank you.

Chair Furfaro: Also please note that the vote is on the amended bill.

The motion to approve Bill No. 2451, Draft 1, as amended to Draft 2 which is attached hereto as Attachment 2, was then put, and carried by the following vote:

FOR ADOPTION:	Bynum, Chang, Kualii, Rapozo, Yukimura, Furfaro	TOTAL - 6,
AGAINST ADOPTION:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0,
RECUSED & NOT VOTING:	Nakamura	TOTAL - 1.

Chair Furfaro: It is a 6:0 vote. Thank you very much for your effort. We are done with this item. Thank you very much for being here.

There being no objections, the Council recessed at 2:21 p.m.

The Council reconvened at 2:35 p.m., and proceeded as follows:

Chair Furfaro: We are back from that short recess. When we left, we were taking testimony regarding the Wailua Beach Corridor and the bike path. I believe, if you can confirm for me, we still have eight (8) speakers?

Mr. Topenio: Yes, Chair.

Chair Furfaro: I told everybody about 2:15; it is 2:35. We will call them out in order. If somebody is not here, put them at the end of the list and we will call them a second time. So we are going to continue public testimony on the Wailua Beach Path and Bike Way.

There being no objections, the rules were suspended to take public testimony.

CAREN DIAMOND: Good afternoon, Councilmembers. Caren Diamond. At the bottom of your sign-in sheet, it says, "affiliation." Today I wrote mine as "commonsense." I hope to address you, and I hope that you can respond, as well as the Administration, with both commonsense and leadership. I recognize that the Mayor was very helpful in realizing that the bike path needed to be moved from where it was. If he had not done that, where it was would have been in the ocean right now. So it is kind of a good thing that he did that. When he moved it, not everybody was happy, but that was that. I think everybody just accepted that that was how it was. In the interim, from the time it was being permitted and the time it was being planned to the time it was being constructed, when you look on the ground, erosion basically has taken away much of that beach. So my thoughts every time I went by was that surely someone like the Mayor or our Parks and Recreation guys or someone in a leadership role would come forward and recognize that erosion and change the plan, but that did not happen.

We invited Ray McCormick, Doug Haigh, and Lenny Rapozo to come to the beach and meet with us. What I learned was really amazing. This is what is called a temporary path, and temporary, \$1.9 million for what is a temporary path, is segments of concrete. Each one of these segments are ten (10) feet long in length. They are nine (9) feet wide. They are either a foot to eighteen (18) inches in depth. So when I hear people saying that this is not a seawall that is a concrete structure along the shoreline, that is the definition of "seawall." Every structure that you put on the beach affects the rest of the beach processes. What is not known is how it will affect the beach processes.

I read Ruby's letter, and as I read it, I realized that she never did give her approval of this project. I think as she wrote that letter, she felt kind of funny because I think she was expected to give approval to the project. So she wrote it in a way that you cannot really tell what she is saying that much. Really, she said that it is not a good idea to put things in harm's way. Certainly this structure would need, during its time, would undergo trouble if that happened. Then she went on to recommend other solutions. Now the solutions that she recommended are not culturally appropriate and probably are not the solutions for this beach, but the solution, really, is that you need to go back to the drawing table and at least stop the current project as it is planned. That is where the commonsense comes in, because if you see a beach that is heavily eroding, why would you put public infrastructure there? The Department of Transportation describes the project as the bike path was connected to the highway median that is going to be the wall. So it is a three (3) foot wall that is along the highway that is connected to this bike path. It is all one structure. In effect, it is kind of like a seawall protecting the highway, only the people get put on this protective structure. That is really backward. I think most of the country right now understands that you should not be putting public structure in harm's way or you should not put it close to the ocean.

Mr. Topenio:

Three (3) minutes, Mr. Chair.

Ms. Diamond:

I wanted to touch on one more thing and that is the historical erosion rates. This project, the answer that we got from Lenny guys is that it is permitted, and they did not need to go back and get any more permits. I understand that is so. But this is a public project. It is not a private developer who will come back and sue the County. It is public. It is public dollars that is being spent on this. So I am just asking you to exercise your best judgment and please rework this project to something that does win, so the bike path can go forward and so it can be one contiguous path in some way, but not along the beach right here. I think the erosion really invites people to come back to the table on this. I hope that you can do that.

Chair Furfaro:

Caren, just to answer a couple of your questions. At the start of the meeting, I do not know if you were present or not, but the moneys for this segment are State and Federal moneys. There is no County money. There is no County land involved. That was one of the reasons, perhaps, the detail in looking at this is probably subject to another meeting that we will reconstruct. Saying that, our position would be one to try to exercise some influence. We do not have authority in a permit that did not go through us. It was DLNR and so forth. Again, we will try to structure a new future meeting, and I think that there were some ideas thrown out today that might be encompassed in that dialogue.

Mr. Diamond:

Thank you.

Chair Furfaro:

JoAnn.

Ms. Yukimura:

When we spoke earlier, you mentioned what you thought the solution could be, and I wondered if you could elaborate on that.

Ms. Diamond:

Sure. You know, I think I am somewhat hesitant to come up with solutions because I think the solutions should involve a larger group than myself. With that said, I do think there is a possibility of a solution on the side where the path is narrower, and there is no new concrete laid.

Basically, you have an unimproved access pathway that is still delineated for the bicycles. You would still need to put up a highway barrier. Other than that, basically what I am suggesting is an unimproved path that is much narrower and does not go on the beach at all and that does not lay any new structure on the beach.

Ms. Yukimura: That would mean it would be in the proposed alignment, but it would be narrower and no concrete or no hard surface and a barrier, but not a one (1) foot wide wall. Is that correct?

Ms. Diamond: It seems like that could be a win-win for everybody. I mean, I recognize that certain people want no structure whatsoever. At this point there is a structure planned on the beach.

Ms. Yukimura: Then we also discussed, and I think it just was part of the question, what is "hardening," because that is not an environmentally sound way to deal with erosion. So the County has said in the past that they are not in favor of hardening in the construction of a bike path. In construction of a bike path, they are not in favor of hardening the shoreline. The proposal is not so clearly not hardening, you know? It seems to be hardening of sorts. I was just reading Ruby's thing, and she does say, and I am quoting here, "as we have discussed, this strategy," and this is a proposal she is evaluating. "This strategy is preferable to other hard 'responses to erosion,' such as seawalls and revetments, because these structures, seawalls and revetments, have the potential to increase local erosion rates during erosion episodes, slow beach recovery following an erosion episode and/or lead to total beach loss as seen in similar situations on Kaua'i." So the wording seems to suggest that she thinks these proposed ten (10) feet long or eleven (11) feet long, eighteen (18) inch thick structures are not hardening. We do not have her here but hopefully we will. I think it is a term of art, and I would like to know how people interpret it and apply it.

Ms. Diamond: As I read her thing, it seemed that she distinguished that because it is temporary. I am not sure how. I mean, a foot and a half thick of concrete and ten (10) feet long by nine (9), that is really heavy. I do not know how many tons that weighs. Obviously, you could say that is temporary, but I am not sure what the cost involved in actually getting rid of it or when that would it be employed? Would it be employed for a tsunami or just a warning for a tsunami or only for erosion? Also, what kind of manpower would that take do that? I would want to know the actualities because it does not really look like it is that removable or that temporary. So I think if they are calling it a temporary path...in the Shoreline Rules and Regulations, "temporary" is defined as something that lasts six (6) months or less. So I do not think they are really using "temporary," as "temporary," and I do not know what guarantees they are giving that they would not put up a seawall to protect the bike path once the bike path is in. Although they say there is no guarantee of it.

Ms. Yukimura: I feel confident that they will not build a seawall to protect it, because I think it is part of the policy. It is very well-known and established, and we would be foolish to do it. The thing they might put up a seawall for is removing the bike path and putting up a seawall in its place to protect the road because, as people have pointed out, it is not an option to lose the road. She does not use the word "temporary" anywhere, but she does say, "the advantages of the removable design include a lower cost quick-removal process," and I do not

know what that means. I think we need to have her here. That is one. Two, the path can be adjusted to localized erosion for individually affected sections.

Ms. Diamond: The erosion rates do not talk about local erosion. It just gauges historical erosion. So one of the things that is missing in historical erosion rates is the current. So I think it is misplaced for this Council or the Administration to look at the past erosion rates and ignore the present that is really hard to ignore.

Ms. Yukimura: Well, I think long-term erosion rates are different from episodic events. The question is if it looks like there is accretion in terms of a long-term measurement, how do we deal with these episodic rates that are not really incorporated into the long-term vision? I think that is what she is saying that it these modular pieces are one way to respond. We could go on and on, you and I, talking about what we think Ruby thinks, and it would probably be best to get her here or Chip Fletcher or some of the experts so they can explain to us better. Thank you.

Chair Furfaro: Caren, we will be recreating a posting that cover most of these items with the intent that Ruby is present and possibly even having Mr. Fletcher come over.

Ms. Diamond: Thank you. That would be great.

Ms. Nakamura: I have a question.

Chair Furfaro: Go right ahead, Councilmember.

Ms. Nakamura: Thank you, Caren, for your testimony. Your solution sounds very familiar. Just tossing out ideas, but it seems very similar to what Carl is suggesting. It probably only works if the State Department of Transportation agrees to this exception to the highway design width. I think that is a question we should be following up with just to see, for safety reasons in this area, whether that would be something to consider.

Ms. Diamond: Well, I think there were two different...well, both Carls had different suggestions.

Ms. Nakamura: I am sorry. Carl Imparato.

Ms. Diamond: Carl Imparato's was to reduce the width of the width of the highway.

Ms. Nakamura: In order to use the existing paved right of way. It sounds similar to what you are suggesting.

Ms. Diamond: It is. Even without reducing the highway's width, which may be problematic, you could reduce the path, and it could be accommodated.

Ms. Nakamura: So it might be just a few feet wide?

Ms. Diamond: It just would not be the deluxe version. It would be more rustic and more natural.

Ms. Nakamura:

Thank you for that clarification.

Chair Furfaro:
you very much.

Okay. We will call our next speaker. Thank

Mr. Topenio:
followed by Jose Rosa.

Next speaker, Mr. Chair is Judy Dalton,

JUDY DALTON: My name is Judy Dalton. I have been going by the beach for the past several months and taking measurements. Each time I go by there, I am shocked at how much it is eroding. It has been eroding quite a bit. The ocean has been coming out and scarfing out the sand here, and you can see right there. We have this escarpment here. You can see right there, there is not much space between the highway and this ledge here. In fact, there is only twelve (12) feet from the edge of the proposed path to this drop-off. There is ocean that comes up here. That is the reason why it is there because the ocean has come here and scoured away the sand. Of course, the waves have pushed up this is the upper edge of the waves as evidence by the debris line. This is being scoured away at a pretty good clip. Each time I go back there, I was like, oh, my goodness, what is going on here? We need to keep in mind that the highway is built on a sand dune. You can see it. There is sand due. Anything that is on *makai* of the highway, what they are calling the county right-of-way, you have is to keep in mind that that is beach. That is all sand. That is beach. It is really important to realize that it is going to be continually eroding, eroding away. Here is a picture of the area back in 2009. Can you see that, Cameraman? In 2009. Even in 2009, it was starting to erode. It was eroding to the point that Dr. Chip Fletcher made these remarks in November of 2009. I am quoting him, "the most appropriate coastal development emphasizes mitigating coastal hazards, such as storm surge, erosion, and tsunami inundation by avoiding the problem through broad setbacks of several hundred feet or more." He recommended a distance of at least one hundred (100) feet, and most importantly, two hundred (200) feet from the vegetation line. So here we have twelve (12) feet, as opposed to what he recommended of at least a hundred feet (100). He also wrote, "the last certified shoreline survey was done in 2007." So here is 2009. Even then it already started to erode because he said in 2007 about this picture in 2009, he said, "the certified shoreline was done in 2007, two (2) years prior to when this picture was taken."

Mr. Topenio:

Three (3) minutes, Mr. Chair.

Ms. Dalton:

May I continue?

Chair Furfaro:

Yes.

Ms. Dalton: The County is required to do a new one since the beach has narrowed. So already it was narrowing back in those years. The debris line is coming much further *mauka*. A new survey will reveal that the new location of the path still does not meet the setback guidelines for construction. So these are quotes that I got from the letter that he wrote to Merle Grimes for the assessment that they did prior to building. At the very least, it would appear we would want to do our due diligence and have a new certified shoreline is because Dr. Fletcher had already suggested that back in 2009. Here we are a few years later and look at the degree of erosion that has taken place in the meantime.

I just wanted to point out a couple of these pictures here. Here is a picture of man fishing on the side because the beach is gone. I went there a few times, and I would see fishermen up on the ledge, and I would say, "wow, what are doing up there?" He said, "yeah." Just last week we were out there on the beach and there was a big wide beach, and then the beach was gone. I took some pictures up here. The beach was totally gone. I took this picture and realized I had to take a run for it between waves so I would not get all splashed. So the beach is gone there. These fishermen were up here on the ledge, and they said, "the beach is gone so we are up here on the ledge." Here is a fisherman sitting on the ledge as well, fishing off the side where the bike path would be. So this ledge is so narrow and so fragile and just crumbling. Each time I would go out, I would say, "oh, my gosh, some more has eroded." It is very, very fragile, very, very unstable. The minute you start digging down at least eighteen (18) inches down, because that is how thick the concrete would be. You would have to dig further than that to have solid bed. So by digging down, you are already compromising the integrity of this area. So by doing so, you are going to have a very unsafe place for the bike path to go, and then you are not only jeopardizing the bike path but the highway itself. So in order to protect, not just the bike path, but to protect the highway, you need to leave the place alone, intact. If you start taking out any trees or pulling up stones or doing any digging at all, you are really flirting with big time danger. Then you would have huge problems. You would have to put in a seawall just to protect the highway. So let us not go there.

Mr. Topenio: Six (6) minutes, Mr. Chair.

Chair Furfaro: Thank you.

Ms. Dalton: Any questions? Judy, very quickly, can I have a copy, if you would give it to Yvette, of what you read from?

Ms. Dalton: Oh, yes. I will email that to you because then I will have the whole document that it came from.

Chair Furfaro: Please do that rather quickly.

Ms. Dalton: I will.

Chair Furfaro: As these project approvals did not come from the County only. They came from the State. They came from DLNR.

Ms. Dalton: Right.

Chair Furfaro: I wanted to forward those highlights to them. Thank you.

Ms. Dalton: You are welcome.

Chair Furfaro: Councilmember Yukimura.

Ms. Yukimura: When were these photos taken?

Ms. Dalton: These were all done this year.

Chair Furfaro: I think we want to know what month.

Ms. Dalton: September, October, and November.

Ms. Yukimura: Do you know how they look today?

Ms. Dalton: The same way. Well, it is coming back a little bit. As you know, beaches accrete and erode. But it is never going to go back as far as it has before, and that is a fact. When it erodes, it is going to go even further towards the highway because that is what beaches do: they accrete, erode. They accrete; they erode. Over the long-term, if they say this beach is accreting, I would beg to differ with that because it has never come back to where it was before.

Ms. Yukimura: I guess the pictures would show that, but Councilmember Chang's description seemed to indicate...and I walked there yesterday, although admittedly I was in my street shoes and I did not walk on the beach itself. I do not know if I saw those kinds of ledges there anymore.

Ms. Dalton: They are there.

Chair Furfaro: Be very cautious on that response.

Ms. Dalton: I was there...

Chair Furfaro: I took pictures yesterday that I plan to show the Council at the end. You are absolutely right about the seasonal accretion, but we have something more current than September.

Ms. Dalton: November also. These are September, October, and November.

Chair Furfaro: The question was how does it look today? It would be nice to have a photo collection of the season, the time, was it during high tide, what kind of swell did we have.

Ms. Dalton: It might have been an assortment of them.

Chair Furfaro: It is very difficult for us both to talk at the same time.

Ms. Dalton: I am sorry.

Chair Furfaro: What did you say? I missed everything that you said.

Ms. Dalton: Yes, I have quite a collection of pictures that I have taken since 2008.

Chair Furfaro: Okay. Councilmember Nakamura, you have the floor.

Ms. Nakamura: Thank you, Judy, for the testimony and for the photographs. They are pretty graphic and tell us a lot. I was wondering, there were several testifiers today who talked about the possibility of realigning it to work within the existing paved right-of-way. How do you think this issue should be resolved going forward?

Ms. Dalton: I think that not even one grain of sand should be disturbed that is beyond the highway. Do not touch it. Leave it intact. It is the only way it will survive future erosion. For solutions, I think that you would have to have the greater community come in and people from different backgrounds and come together. At one point, I was really hoping that one of the options to begin was the path go behind Coco Palms. That is actually a road. It is a road that was used for many years, and there would not have to be any more concrete or anything paved over. It is just fine the way it is. As far as the access from Kuamo'o Road, Mr. McCormick, from D.O.T., had said that they were going to be widening Kuamo'o Road anyway. So there would be a possibility for a narrow path behind Coco Palms. It would be a much more pleasant experience for people, too, rather than besides all of those trucks whizzing by and cars. It is very peaceful back there, and it goes by a canal, and you have beautiful mountain views. It is quiet and very, very nice. In fact, we walked behind there with D.O.T., Pat Fung, and he was very enthusiastic as well. He liked the idea.

Ms. Nakamura: Then that would hook up to Haleilio?

Ms. Dalton: Yes, that is right.

Ms. Nakamura: Then Papaloa from there?

Ms. Dalton: Yes, one time it was going to cross Haleilio and then keep on going, connecting by Foodland.

Ms. Nakamura: So both of those options that you discussed would work, in your opinion, rather than what is being proposed?

Ms. Dalton: Yes, as long as you just do not go on the sand, not one grain of sand *makai* of the highway.

Ms. Nakamura: Thank you, Judy.

Mr. Chang: Judy, thank you for being here. So let me ask you a question in regards to erosion, do you monitor any other beaches on Kaua'i?

Ms. Dalton: For erosion?

Mr. Chang: Yes.

Ms. Dalton: I have been just monitoring Wailua Beach for the past four (4) or five (5) months, because that is when I noticed, oh, my goodness, what is happening here? That is when I was going out and taking many, many pictures and measuring as well. I have measured on three (3) different occasions.

Mr. Chang: I knew it was a Caren Diamond question, because I was going to make references to some of the beaches that erode on the North Shore. I knew it was a Caren Diamond question. I will say that I was on the beach on Monday. I knew it was an agenda item, and I will say that I did walk the beach. So those cliffs or those drop-offs, from what I saw yesterday, do not exist. As I mentioned earlier to the people that were here earlier, there was a tree. I noticed a tree on that picture there that on August 23rd, Thursday morning, that tree almost fell into the water. The water line was right at the base of the tree. So I can

say from the tree that never fell into the water, and, again, I do not know if it was low tide or high tide or what have you, but that was at least, at least twenty (20) feet to the ocean.

In other words, the sand had replenished from the area where the volleyball courts were, around by the parking lot area itself. That is further down. You do not have any pictures of that. There was at least fifty (50) to sixty (60) feet of sand, tall big sand from that part that was once eroding to the beach. I think it was Sharon Goodwin that mentioned the ironwood trees that fell in the water. So from that line to the shore, the beach, was, again, in my opinion, about fifty (50) to sixty (60) feet from the water. So that is how much the sand replenished. If you went underneath the bridge, if you went underneath the bridge like where the river mouth is to the ocean, I would say it is at least a hundred (100) thick wide feet of sand to the water. Those pictures, I will agree with you. I saw the condition of the beach as such, but it was months ago. So right now, I would just want to say, and I did clarify this earlier, and I do not know at what rate, but that was just three (3) short months ago and there is twenty (20) plus feet minimum right in the middle of Wailua Beach. So I would say that I can recognize those pictures. But as we speak right now, from what I saw hands on, the beach has grown. So I just wanted to make sure of that we got an accurate...

Ms. Dalton: I understand it is undergoing some accretion right now, but I was just there last week and we were videotaping, and I have picture on my iPhone that shows the dates that I took it. These are recent. It will come and go, come and go, but it will never come back as far as it did. It will always go more *mauka*, especially with sea level rise. That is just a fact of life.

Mr. Chang: Have you been underneath the Wailua Bridge recently?

Ms. Dalton: Yes, I have been.

Mr. Chang: Were you familiar with the rains of last winter at some time when the big trees did fall in by the parking lot? I think it was three (3) ironwood trees?

Ms. Dalton: Yes.

Mr. Chang: Do you think if they dredged the river mouth...

Ms. Dalton: I do not know the answer to that question.

Mr. Chang: Okay. Thank you.

Chair Furfaro: Mr. Rapozo.

Mr. Rapozo: Thank you, Mr. Chair. Thank you, Judy for coming and presenting those photos. I think the clear explanation is you went low tide, and he went high tide. I pass that beach every day. I live in the Wailua Houselots. I have seen that beach most recently as yesterday. In the mornings it was kind of dark. I probably stopped a week ago at the parking area closest to the bridge and did take a look down the beach, and those cliffs were still there last week.

Ms. Dalton: That was my experience as well.

Mr. Rapozo: I think if we want to compare pictures, it needs to be apples and apples. It needs to be high tide versus high tide or low tide to low tide. To compare a low tide photo with a high tide photo, and if you look at the definition of the shoreline in the State H.R.S., it is "the highest reach of the waves."

Ms. Dalton: Correct.

Mr. Rapozo: Highest reach. It does not say during high tide or low tide, but the highest reach.

Ms. Dalton: Right.

Mr. Rapozo: So the shoreline, if the State did a survey, would obviously be at the end of the highest reach. It used to be the vegetation line, but it is no more the vegetation line. It is the highest reach. So at the highest surf point *mauka* that is the shoreline. So I think we need to be cognizant of that. It is no longer the vegetation, but it is the highest reach, and obviously the highest reach would be where that cliff is.

Ms. Dalton: Which is twelve (12) feet away from the purposed path.

Mr. Rapozo: At some points, yes. Thank you.

Ms. Dalton: Thank you.

Mr. Kualii'i: Aloha, Judy, and thank you for being here today. Mahalo. Would you support the path being in any alignment along the highway, whether it be on the existing highway, you know, that white line...

Ms. Dalton: If it is on the existing highway...

Mr. Kualii'i:or the *mauka* side?

Ms. Dalton: Either side of the highway, anywhere except...

Mr. Kualii'i: On the soft surface, on the beach?

Ms. Dalton: As soon as you get off the shoulder of the highway there, it is called the County right-of-way. It is beach. So it is beach.

Mr. Kualii'i: Thank you. Thank you, Mr. Chair.

Chair Furfaro: While we continue taking testimony, I am going to ask that we run yesterday's pictures on the screen in the background, and I will ask that my PowerPoint be submitted to all of you so you have the slides. The rule is the high wash of the water under normal conditions and also the fact of the matter is you will see some demonstrations from our staff. You can see the height from a tape measures yesterday. There is a ten (10) foot surfboard on the beach where you can actually see there is only about three (3) feet further in front of the

surfboard, to give you an idea of the high wash. I would just like to run through those. This is as of yesterday. If we could take them on a three (3) second roll and then I will have a copy sent to all of you. This is yesterday. This is about a three-quarter incoming tide. It is powering up, but please roll it for three (3) seconds, please. I will send this all to you folks so you have a copy.

Chair Furfaro:

Next speaker.

Ms. Dalton: Wendy Raebeck, who had testified before you a couple of weeks ago, is in New York to be with her father and emailed me her testimony and asked me if I could get someone to read it. I gave it to somebody to read, but I forgot to sign up her name. If I could do so now?

Chair Furfaro: Sounds fair. Do you have the name of the person who will read it? Please come up. I am not sure of your name.

KATHERINE MUZIK: Aloha, Councilmembers, good afternoon. Like Dickie Chang, I was surprised to be here talking. I moved here a year and a half ago from Okinawa. I am a Marine Biologist with a specialty in coral and environmental education. So I promised myself to remain silent and only listen for a couple of years here.

Chair Furfaro:

Could you give us your name.

Ms. Muzik: Katherine Muzik. I was asked to read this morning and I refused. And then moved by the testimony by the lifeguard, talking about Frank Sinatra, and I was reminded at how in Okinawa the professors know so little about the ocean compared to the fishermen and the people who have been there forever. Second, when Carl Berg says nowadays discussion about the erosion and accretion is irrelevant, I agree. I have been to several coastal zone management meetings. Looking at the data and the projections from the University of Miami, Rasmus and Hawai'i, it seems like we are not looking at 80 years of data anymore. We are looking at a future catastrophe. Third, I would like to bring a cautionary tale from Okinawa, because Okinawa has been cemented entirely. There is no place you can get to anywhere on the coast without stepping over cement. It has hardened, not only the land but the people. They lost their culture. I moved here because there is still a shred of being Hawaiian, and people are fighting for it. Also, this temporary ten (10) foot structure, the tetrapods in Okinawa, some of them are bigger than this whole room, and they move with the storms. They move hundreds of feet. If you have any kind of storm, not even a typhoon, you could have these pieces on the highway and even towards Coco Palms. So having said that, I do not know how long this will take. I will try to keep it under six (6) minutes. This is again from Wendy Raebeck.

"Aloha, Councilmembers. Regarding the proposed bike path on the *makai* side of the highway at Wailua Beach, I believe there are numerous reasons why this is foolhardy, financially unsound, counterintuitive, and environmentally destructive. The following points have come up continually regarding this diehard plan that only a few outspoken individuals seem to favor. One, Wailua Beach is narrow and frail. Environmentalists from the Sierra Club to the Surfrider Foundation to anyone familiar with beach ecosystems concur that constructing anything on or near that beach will completely destabilize the last few feet of dune left at Wailua. Two, locals, including beach-goers, fishermen, Hawaiians, cultural practitioners, surfers, and kite-surfers, Wailua residents, such as myself," speaking

of Wendy, "environmentalists and canoe clubs, have vociferously objected to this proposal since the first mention of it but have never been justly heard. Three, the entire Wailua River Basin and all surrounding beaches have long been recognized as sacred. This unique place should be preserved and protected for the special historical site that it is. To mar it and scar it with bike path is not *pono*. Four, there are other more viable options that nobody objects to and that most people prefer. The path could be on the *mauka* side of the highway where highway widening is already planned or it could be behind the Coco Palms Hotel where there is already an existing pathway. Five, we do not have to sacrifice one resource for another. We do not have to lose a beach in order to have a bike path and many find it unthinkable that this has never been a consideration. Six, just because several individuals have decreed that the bike path should be near the ocean, it does not make it mandatory. The path can be wherever the people of Kaua'i feel comfortable permitting it. Many believe variety will make it far more attractive and preserve our coastline. Let us see, she has got eighteen (18) points. I am not going to make it.

Chair Furfaro:

We all have copies of this testimony.

Ms. Muzik:

I can send you this.

Chair Furfaro:

We have it. So just continue reading.

Ms. Muzik: Okay. I will continue with six (6). Is that where I was? Seven, to disregard global warming when you are having a picnic at the beach is okay, but to disregard it while you are installing a multimillion dollar strip of concrete on top of sand and rooted foliage defies commonsense. Eight, the idea of a concrete path that can be dismantled and removed during storms, tsunamis, hurricanes, floods, or seasonal turmoil is not viable. In the event of a hurricane or a tsunami, there is no one who will choose to fuss with concrete slabs at Wailua Beach rather than tending to their own family, property, pets and possessions. Why would anyone approve of a plan that has disaster spelled out right at inception? Nine, exactly as was predicted years ago, Wailua Beach has now eroded tremendously, and at present there is literally no room for the path. If it goes in at the expense of remaining greenery, there would be nothing to hold the sands at Wailua Beach. Ten, there are graves and numerous *iwi* buried in the sands of Wailua Beach. My neighbor, Valentine (I do not know his last name, but I am sure some on the County Council have heard his testimony), is someone who actually buried the bodies there. He said the bodies were buried sitting up and thus are harder to find and easier to destroy. In his late eighties ('80s), he is one of the many *kupuna* opposed to a path on that beach. Eleven, Wailua Beach is beautiful and a welcome sight when approaching from either direction. What preserves its beauty is the slim strip of greenery whose roots hold the beach in place when the water rises. That shrub line also creates a buffer from traffic when one is on the beach. The present plan on the path *makai* of the highway intends to take out a substantial portion of that greenery. Not only does that kiss the dunes goodbye, but it means losing the essential green barrier separating the beach from the busy highway. Twelve, the argument that it is not safe for cyclists and pedestrians to cross the highway if the path was on the Coco Palms' side is not grounded in reality. Everyone comprehends the workings of a traffic light, and a light already exists at Kuamo'o Road. Furthermore, the spur that the path people are creating down from Kawaihau Road to the existing path is more dangerous (because there is no signal), but no one is citing that as risky. Thirteen, the path people have already shown questionable thinking by initially proposing that the Wailua segment be a

boardwalk right down to the sand. Not only was that plan stunningly weird, but that boardwalk would now be long gone at our expense. That proposal, by the way, was presented with the same curve as this current rendition. Fourteen, path proponents state that the path will protect the coast, but in the case of Wailua Beach, it will actually destroy the coast. Fifteen, there have been numerous opportunities for the community to speak out about portions of the path...

Mr. Topenio:

Six (6) minutes.

Chair Furfaro: I was going to give you until 18. I want to share with the audience again, we had sixty-one (61) separate emails on this item. When you came and said to me that you needed to read it, I thought you were implying that they have not given written testimony. We do not read all written testimony, but go ahead and finish up until 18.

Ms. Muzik: Fifteen, there have been numerous opportunities for the community to speak out about portions of the path, including meetings regarding this phase, and powerful testimony was delivered. At every community meeting I have attended, despite potent opposition to a path close to or on Wailua Beach, none of the commentary was legitimately considered. Each time the originally proposed route simply continue unfazed. In other words, public testimony has been consistently dismissed. Sixteen, the existing lava rock wall on the *makai* side of the highway at Wailua Beach was obviously constructed to protect the highway from high water and debris from storm surges. It is an effective, well-built and aesthetically pleasing wall that was built for a reason, obviously to protect the highway, and it should not be removed or dismantled. Part of the current path plan is to move that wall more *makai*, but it needs to remain. If it is not broke, do not fix it. Seventeen, Department of Transportation believes there is no room for the path, and that constructing it *makai* of the highway will jeopardize the highway itself. To protect the highway and the path, should it go in there? D.O.T. has mentioned installing a seawall to protect all of the pavement. A seawall basically promises to reshape and threaten all the sands of the beach as well as the sands at the river-mouth and surrounding areas. Seawalls can be devastating environmentally and would also affect the surf-break at Wailua Beach. Eighteen, if the path is constructed on the *makai* side, tourists and others will invariably trample the remaining greenery to walk down to the beach. In fact, they are likely to drag their bikes with them. Mahalo, Wendy Raebeck."

Chair Furfaro;

Thank you very much.

Ms. Muzik:

I am sorry. I do not know your rules.

Chair Furfaro:

No, no. It is quite all right.

Ms. Muzik:
she had something to...

I wanted to comply because it seemed that

Chair Furfaro: I understand your point, but not knowing that we had all received electronic correspondence on the item, we do not necessarily read them all, but we made that exception. Thank you for reading that.

Ms. Muzik:

You are welcome.

Chair Furfaro:

You have a question, Mr. Chang?

Mr. Chang: I was just going say thank you.

Mr. Kualii: I had a question.

Chair Furfaro: Go ahead, Mr. Kualii.

Mr. Kualii: Aloha, Katherine Muzik. The interesting part, I thought, when you first spoke, you said you were a Marine Biologist.

Ms. Muzik: Yes, sir.

Mr. Kualii: You also said you wanted to just listen for a couple of years, is that what you said?

Ms. Muzik: Yes, because every island and every beach is different, and before I jump in...I am very interested in environmental protection and education. I lived for a total of eleven (11) years in Okinawa, and it took me the first five (5) to be accepted in the community, and twenty (20) into Puerto Rico. People tend to be tribal. So before I put my foot in my mouth, I thought I would keep it shut.

Mr. Kualii: How long have you been here?

Ms. Muzik: One year and a half.

Mr. Kualii: I just think with your background and everything, just listen to the *'aina* and start talking. Do not wait any longer, because I think that you have the right spirit and probably the right scientific knowledge as well. Thank you for being here today.

Ms. Muzik: Thank you. I would love to participate in community activity on this island. I plan to stay here for another thirty-six (36) years. Thank you.

Chair Furfaro: We have one more speaker signed up?

Mr. Topenio: Your last registered speaker is Mr. Tommy Noyes.

TOMMY NOYES: Good afternoon, Councilmembers. My name is Tommy Noyes, and I am a board member of Kaua'i Path Incorporated, a nonprofit 501(c)(3) organization, advocating for better walking and biking facilities on the Island of Kaua'i, State of Hawai'i. We have seen a lengthy process of discussion around various phases of the path. I would like to point out that we have been through a complete environmental assessment with this project. Early on, there was a recommendation from consultants that the best approach would be a meandering boardwalk on the beach. That recommendation was designed and subsequently with opposition. In response, the Administration redesigned the path alignment in consultation with Department of Transportation and now we have an alignment that stays completely within the travel way paralleling the highway. So I think that over time, the Administration has been responsive to community needs. We have seen redesigns. We have seen a narrowing of the path alignment from a twelve (12) foot width originally, down to an eight (8) foot width. I would like to point out that if you consider narrowing the structure below eight (8) feet, it is no

longer a multiuse path. You are talking about something else. If you are talking about a soft surface path, you are not going to be ADA compliant, using State of Hawai'i guidelines for adhering to Americans with Disabilities Act. So I think looking at the Wailua section as a transit way, walking and bicycling is a valid mode of transportation. It is part of building an active community that values the health of its citizenry and encourages people to get exercise that is certain to improve their well-being. So one of the responses that the Administration has come up with is going to the modular structure that is removable. I would like to recommend that if anybody would like to see some of the community members that use these types of facilities on a daily basis, on a frequent basis, go to Kaua'ipath.org and look at the link on our homepage. What does *ke ala hele makalae* add to our community? You will see people that you know speaking to this issue. Thank you very much.

Chair Furfaro:
Yukimura.

Mr. Chang first and then Councilwoman

Mr. Chang: Thank you, Chairman. Tommy, thank you for being here. You know, I apologize, because I really never thought about the ADA Act. So what you are saying is from ten (10) feet wide to eight (8) wide, and anything smaller we would not be compliant?

Mr. Noyes: Actually, a multiuse path is considered eight (8) feet and larger. Once you are below eight (8) feet, then you are getting conflicts with passing bicyclists, bicyclists passing pedestrians, bicyclists passing pedestrians who are walking their dogs, children. One of the comments that came up earlier was look at Kaumuali'i Highway. You have bike paths on both sides of the highway that are only this wide. Those are not multiuse paths; those are bike lanes. Additionally, to that bike lane infrastructure, that section of highway has sidewalks on both sides. So you accommodate the pedestrians with a sidewalk, and you accommodate Class A or Class B cyclists with the bike lane, but you probably would not feel comfortable putting your 6-year-old child out in a bike lane that is for a more serious class of cyclists.

Mr. Chang: Does the strip that we are talking about at Wailua, does it have to be a multiuse path? Can the multiuse path link to a path and then hop back onto a multiuse path?

Mr. Noyes: My understanding from discussions with the Department of Transportation is that if they intend to use Federal money, there needs to be an ADA compliant walking alignment as part of that facility, and they are using the multiuse path to meet that ADA requirement for Federal funding.

Mr. Chang: Has there been any study? Because what I am hearing from most of the people, I would say the majority, it seems as though there could be a path. I am envisioning a crushed coral path, four (4) four and a half, (4 ½), maybe five (5) feet. If that was the case, that does not intrude into the sand. You know, maybe where some of the trees will be removed. It does seem it is still from the white line in eleven (11) feet that you could be doing something and you would still have that protective barrier, because I do not agree with the fact this is considered a low-speed corridor because people are flying there, no matter what you say, in and along that area. People know why you are there. Is there not a way it could be more like a crushed coral path with interpretative signage on both sides that say, "hey, this is a sacred place." It is almost like if we have to cross the street

at Kuamo'o and wait for the light and walk on a crosswalk, I mean if that was the case, and come back to Haleilio, get off your bike, walk, would not this be a cool way to show respect, in which case the 1.9 million is not needed? Is that something that can be done, not just to save money but to end something? Whether it is retractable, permanent, removable, what have you, to just have a path by not naming it "multiuse" and would that not be something that could be feasibly done? Have we studied or even talked about that?

Mr. Noyes: From my discussions with the Department of Transportation, the ADA compliant pathway, which would be a surface with concrete or asphalt. Those are the two (2) ADA compliant surfaces in the State of Hawai'i that are recognized. That is a requirement to use the Federal funds that is going into the highway expansion as well as the path construction.

Mr. Chang: Okay. I understand.

Chair Furfaro: JoAnn, go right ahead.

Ms. Yukimura: Thank you, Tommy. My questions are regarding the proposed modular structures. I do not know if you can answer them. One of the questions raised is what happens in the case of a tsunami? Maybe you know how to interpret Ruby's statement that the advantage of it is that there is a lower cost quick removal process, and also that the path can be adjusted to localized erosion for individually affected sections. Can you help us understand that?

Mr. Noyes: Well, I think a tsunami is a term for a seismic event, a seismic-generated event. We recently had a tsunami alert, and there was movement in the harbors. That was a tsunami. We did not detect any effect on Kaua'i, that I am aware of. If you look back sixty (60) years, there were tsunamis that moved a lot of material all along the coastline – huge amounts. So you have a broad range. We do not know what a tsunami magnitude will be the next time we have a seismic event. If we are unfortunate enough to have a highly destructive tsunami, my sense is, looking at a piece of infrastructure like the bike path that is displaced, that will be very low on our responses to rebuild our harbors, to rebuild our airports around the state. Līhu'e is the only airport around the State that is outside of the inundation zone, so we are going to have problems, orders of magnitude above the topic of discussion today.

Ms. Yukimura: I think FEMA requires breakaway walls so that the wave action can go through, preserve the upper floors, and hopefully not cause damage to adjacent or other properties. Those modular pieces, I do not know how heavy they are or how far those modules would move, but they are approved, I would imagine, in not causing tremendous other harm in cases of very big wave action. You did not answer the second part about low-cost quick removal and how to adjust to localized erosion, if you know the answer?

Mr. Noyes: Yes, I would be reluctant to respond to a question like that. It is really beyond my area of endeavor as an advocate for better walking and bicycling.

Ms. Yukimura: What about the idea to go on the road is that *mauka* of the Coco Palms premises?

Mr. Noyes: My understanding is that from the environmental assessment, the Lafrance Kapaka and Pōhaku Nishimitsu, two (2)

of the cultural practitioners that were interviewed at the time...they are both deceased...were adamant that because of the prevalence of burial sites throughout that area, it would not be an appropriate place. Their strong recommendation was the beach alignment, because they knew as the archaeological work has shown, those were disturbed strata. That is why they made that recommendation; that is a lot of basis for the selection of the beach alignment back in 2007 in the environmental assessment that got the finding of no significant impact.

Ms. Yukimura:

Thank you very much.

Chair Furfaro:

Go right ahead, Councilmember Nakamura.

Ms. Nakamura: Thank you for your testimony, Tommy. I wanted to just clarify that the eight (8) foot wide minimum is to be in compliance with Federal ADA Law?

Mr. Noyes: Let me clarify that a little bit. Eight (8) feet is the minimum width for a facility regarded as a multiuse path. Once you get narrower than eight (8) feet, you are really not talking about a multiuse path. It is something else. So the ADA part, that is the surface, and the slopes involved both cross-wise and pitching. So to use Federal money on a project like that, or I would imagine State or County money, you need to adhere to the Americans with Disabilities Act's requirements. Having a transit way that is ADA compliant is a requirement now. If you put in a narrower sidewalk, that would be ADA compliant, it could be concrete or asphalt, but it would not be a multiuse path. Then the temptation would be, "I am going to ride my bike on that anyway because it hooks up to the multiuse path," and you are going to have crashes. You would have bicyclists running into other path users. Okay. We are in a state, on this island, of trying to catch up with active transportation infrastructure. So you frequently see people operating their bicycles in ways that are illegal, for instance, riding on the sidewalk in a business district. That is illegal. Riding a bicycle without a helmet when you are sixteen (16) or younger is illegal. Enforcement has not been applied yet on these activities. We are trying to make Kaua'i more friendly to active transportation. Active transportation includes transit, use of the bus.

Ms. Nakamura:

Thank you very much.

Chair Furfaro: Tommy, two questions from me. The bicycle ruling, I just saw a series of articles in the Garden Island, with some bicycle clubs that were here that gave great praise to our island facilities for bicycling and so forth. That code is no bicycle shall be more than two (2) bikes deep and no space should be less than seven (7) feet, three and a half (3 ½) feet per bicycle regardless if they are going in the same direction or counter. Is that a pretty well-understood standard? What I am getting at is because Wailua is so special, sacred, in fact, it is *wahipana*, is there no way we could apply for a variance?

Mr. Noyes: I am most familiar with the AASHTO guidelines for bicycle and pedestrian facilities. They recommend or they set forth their guidelines and the path width of eight (8) feet is what they say is the minimum. If you want to go ahead and build something that is narrower, that is up to you. You can deviate from AASHTO Guidelines. But in previous Council Meetings, I have always heard that adhering to the AASHTO Guidelines is the prudent thing to do because once you move away from it, you open yourselves up liability and criticism for not designing properly.

Chair Furfaro: First of all, the Council is not involved in the actual design, but we heard from engineers like Carl Imparato and so forth today that said there could be some exceptions made to the width of those lanes. There could be some exceptions made during that 280 yards fronting Wailua Beach. I am just asking if you folks had ever pursued the possibilities of some variances. The reason I asked that is because I think on January 13, the permits for Coco Palms expire. It is the second time they are going to expire. In that process, and in those conditions, there is this transfer of property that is where their current shops are. That there was going to be a twelve (12) foot grant for the widening of the highway. Obviously, that is a condition in Coco Palms' permit with the permits expiring on the 13 of January, as I understand it. I am not an authority on that, but there could be some, not to tamper with the grove. But to acquire some more land there for the possibility of the bike path being on that side of the road. Has that been explored?

Mr. Noyes: All of the discussion that I have followed has been working within the existing travel way.

Chair Furfaro: Thank you. I appreciate your direct answer to that. Before we end the day, I want to say, Thomas, thank you very much for all of your work, all of your work on the bike path. We have to, I think, continue dialogue here to come to a resolution. It is important to keep back and forth conversation going. We, on this particular strip, do not have any leverage on funding or anything for this portion of the bike path. I am trying to get some legal interpretation of that for the Council, but I wanted to say thank you very much for the work that you do and want to continue the dialogue. Thank you. Mr. Kipukai, do you have a question? Go ahead.

Mr. Kualii: Thank you, Mr. Chair. Aloha, Thomas, and thank you for being here and the work that you do. Earlier our Parks Director said that he worked with the D.O.T. and that was the farthest *mauka* they could get out of D.O.T. You had mentioned that the path was redesigned and realigned based on responding to the community's objection of when the boardwalk was actually going on the dunes. In that time, you and your organization played a role in that in working with the County people and a group of people to do the redesign. In that process, how did you end up here when there is still community objection? Was it truly because you did everything that you could with the State to get inches more or three (3) feet more, or whatever space is required, to do it *mauka* of the wall or on the asphalt as it is now? I see you, too, as a community organizer. I think that anyone involved in making this and finding that really winning solution would be to use all of the community to push the State to do the right thing on that alignment, but that was not done necessarily to get beyond the "no," that the State said this is the farthest we can go, using the energy of the community? Now it is making sense that there might be further opportunities with Coco Palms having sat vacant for so long and the talks about even possibly Coco Palms become some kind of public project of sorts. So maybe with just a little bit more time, you could have all kinds of options. Have you thought of any of that?

Mr. Noyes: I do lay awake at night, thinking about these things, for a fact. My sense is that since we started this process many, many years ago and have devoted many, many hours of Council time, considering every angle of it, things are in place to proceed based on the best knowledge and expertise that can be brought to bear on the project, and it is time to move forward with the plans as they exist.

Mr. Kualii'i: Would you not agree that it appears that some of the okays, if you will, or approvals seem very shaky? Like just kind of borderline, starting with the concern that Councilmember Rapozo was addressing about all these setbacks. Well, you already have the permit, and if you were trying to get the permit today, you could not get it, because it does not line up. Are we going to allow other developers to now do what we ourselves are doing, which is not following our own rules in a way? That is one. Then the thing from the Hawaiian community, I do not think I saw a clear articulation from Native Hawaiian organizations saying, "this is okay." Even the letter from the person at SHPD, which was Pau Aiu, I think it was. That was the closest it came to any kind of semi-approval. Then this new letter we are looking at today from Ruby Pap, when one of the testifiers read the sentence that went, "while the recent and previously observed erosion episodes are temporary, similar episodic or event-based erosion events are highly likely to cause management problems when infrastructure sited close to the beach in this area in future." To move forward, and even now you are saying these two (2) *kupuna*, who are both passed on had said, "No, do not go on that back canal road because there are cultural issues there." Yet the road is already there. So you would not be digging anything. You would just go on the road that is already there. That is already along a canal. I believe the battlefields is *mauka* of the canal that holds swamp lands, if you will, and clearly on the Coco Palms property there would be cultural sites, and what have you. There are other Native Hawaiian cultural practitioners that are actually living that say differently. You have only quoted the two (2) who are not here. So I mean, there is just a lot of different pieces of the whole puzzle. The biggest piece is where the win-win solution is, so that all the community can be behind it, because this is a good thing. I mean, having a bike path that everybody can enjoy, for health reasons, for fresh air, for circulation. I mean, it should be easy to get everyone to support this if everything is done correctly, and it is lined up. I should not say, "it is easy." I know you have worked really hard and really long, and you are tired and frustrated.

Mr. Noyes:

I agree with you, it should be easy.

Chair Furfaro: Thomas, may I share with you. I think I am going to take some of Councilmember Kualii'i's questions and really direct them over to the Administration.

Mr. Kualii'i:

Thank you.

Chair Furfaro: Your role is a volunteer. I think the answer to some of those questions, this Council still needs to hear from the Administration. Mr. Kualii'i.

Mr. Kualii'i:
for all of your work.

Let me just say thank you again and *mahalo*

Mr. Noyes:

Thank you.

Mr. Kualii'i: I know you and all the people that work with you, I know you are just one person here today, but there are a lot of good people involved. I remember going on the tour and everything. Thank you and keep up the good work.

Chair Furfaro: Thank you, Mr. Kualii. Thomas, I want to say thank you very much. We have two (2) more speakers that have signed up, I understand. Then we are going to need to take a caption break. Thank you.

RICHARD STILLMAN: My name is Richard Stillman. I represent myself, and my remarks are not as well-prepared as I would like, so I do not know where this is going to go, but it is probably going to be all over the place. I have been here since a little before 9:00 this morning, listening to all the testimony. It has been really good. I meant to thank the Council for bringing this up. It has been a while since this has been public. We have had a lot of good stuff in the newspaper lately too, so obviously it is a big item. It is controversial. It is heartfelt, a lot of the testimony that we heard today. I would especially like to thank you, Councilmember Kualii. Where to start? The first question I kind of have, and we can just let that go because I do not want to take time, but does this body have the ability to stop that this if they hear this is bad enough or not?

Chair Furfaro: I think I tried to answer that. We were bypassed in DLNR, as well as the State did the planning on this portion of the route.

Mr. Stillman: Okay. About the setbacks I have heard about, something like forty (40) feet or whatever, is that in County Charter, or is that something else?

Chair Furfaro: That is an ordinance, Richard, and it is a setback of...there is a schedule, which is a County Ordinance that was passed by this Council.

Mr. Stillman: So the last meeting I went to in December of 2008 was at Lydgate Park. There was a lot of testimony then. As I was there, there was a lot of good testimony from Native Hawaiians. They were all, of course, against going off across and trampling on that beach. I am on their side. I was upset a little while ago. Looking at some of the license plates at some of the cars, and you would swear to God that we are in Hawai'i, yet we disregard all of their input, seemingly. All of the testimony that we heard today about stay off of that beach, stay off of it. It is a sacred place and cultural. I do not know enough about it, but I know what "kapu" means, and that is what it should be. I got it loud and clear in that meeting - hands off. By my tally, it was fifteen (15) against on the beach and one (1) for here. I appreciate what you were saying. I think there is a possibility that we can get consensus because we have narrowed down a lot of options, down to just you a couple. Maybe we are in the homestretch of what should be done, but it is not over the beach, the way that it is now. I know you are going to lose Federal and State money, and it is going to cost jobs. That is not good. Hopefully, those jobs can be recovered somewhere else. We should do something right, not wrong, not something that is going to have opposition. I agree that everybody should be happy about this, because generally speaking the multiuse path is a good thing. I use it over on the north side of Kapa'a. I am also curious about what is going to happen on Kawaihau, because coming down that hill, I am waiting for somebody to hit their brakes and they are not going to work. I do not know if there is supposed to be a barrier there so they will slam into that and will not get on the highway. I have not heard what is going on with that, but with no traffic light there, that cannot be any worse. In fact, it has to be worse than what is going to happen over at Kuamo'o, if there is going to be a path crossing and Haleilio

or Lani Kai, wherever that new light is going to be, whatever. Those at least have signals. Let me look at my notes.

Chair Furfaro: Richard, that was your first three (3) minutes. You have an additional three (3) minutes.

Mr. Stillman: Okay. Thank you. I have heard some talk about lower speed corridor there, and nobody is adhering to the 25 miles per hour. That is an enforcement issue, not an issue of what is posted. If there were some cops out there that were actually ticketing, they would slow down. I know I do not. Another thing about enforcement, what about cell phones? I do not drive with it on my motorcycle, and I do not drive with it in my car either, but that is another thing that is causing accidents, and you do not see a lot of enforcement on that either, but that is another story. That is causing danger. The little bike lane that is over there in front of the Kukui Grove, I drove by that and wait until a bicycle gets there. I do not see any now, and I think there is a reason why. Nobody wants to get in there because there is a place where the merging goes this way, and you are really hanging out there in the middle of nowhere. I do not know where these bicycles are that are going to go on there now. Where are the bicyclists going now that want to go from Haleililo across the Wailua Bridge? There is a shoulder there. If there are any that are actually using their bicycle, they are either walking it or they are getting by. I have not heard of any killings yet in that area, so somehow they are able to be without the pretty bike path or multiuse path. Am I getting close to my six (6) minutes? Do I need to get out of here? I want to know how wide is that canal road behind the Coco Palms, if anybody knows.

Chair Furfaro: I am sure that we have that information somewhere. But we came only to speak on the corridor within the beach area.

Mr. Watanabe: Six (6) minutes.

Mr. Stillman: Some are getting input of other ideas of what to do rather than going over the beach. I am against on the beach, though, bottom line.

Chair Furfaro: Richard, thank you very much for your testimony. I understand we have two (2) people that signed up. Before we take a caption break, is there anybody else that wants to sign up?

KIP GOODWIN: I wanted to share what I heard from Doug Haigh at a Wailua/Kapa'a Neighborhood Association meeting in March when he did a presentation. He said that there is no requirement in the Federal funding that the path be continuous from one end to the other. So it seems to me that it became necessary that this portion that is adjacent to the beach could be excluded, and that all the rules following would not have to be contended with. The only other point I have to make is that to walk from the parking lot on one end of the beach to the parking lot on the other end of the beach takes you seven (7) minutes. So that is the sum total of inconvenience for someone on a bicycle if they have to get off and walk their bike down the beach. Thank you.

Chair Furfaro: Kip, thank you very much, because that is going to be one of our questions going over to the Administration, that there could be a break in that segment.

Mr. Goodwin: If you can get that independently confirmed.

Chair Furfaro: We are going to get that as a question.
Mr. Chang.

Mr. Chang: Kip, thank you very much for being patient all day. Can you repeat what you said? You had a conversation with Doug Haigh, and can you repeat what you said?

Mr. Goodwin: He did a presentation at a Wailua/Kapa'a Neighborhood Association meeting in March. He said that the Federal funding does not require that the path be continuous.

Mr. Chang: Thank you.

Chair Furfaro: Kip, thank you very much. Our last speaker,
Sherri Yokotake.

SHERRI YOKOTAKE: Good afternoon, Chair and Councilmembers.

Chair Furfaro: Hi, Sherri.

Ms. Yokotake: First of all, I want to give you my condolences from our family to yours for the passing of your in-law. Very good friends of my husband. I came here with my *mo'opuna* and my son. He was going to do the *mo'okū'auhau* of our family. I am going to do it in English so that you folks can appreciate that there are still families around who are actually the stewards of the property that is being debated before everybody on a Federal, State, and County level. My *mo'opuna* is Kāne'aokinoakoa Cummings. He is the son of my son, Russ Michael Keali'imahu'iki Cummings. Myself, Sherri Lee U'ilani Cummings Yokotake. I am the daughter of Gary Frank Cummings, Senior. My mom is Ruby Kawaiu'iliahia Pia. Her mom is Miriam Eto Taniguchi. Father is John Kūkū Pia. My *tūtū* man's parents, Keoni Kūkū Pia and Kahinawe Keo. Kahinawe's parents are Wahinealoha Keo and Hō'ā'ā. Wahinealoha Keo and Kahinawe Keo had my *tūtū* man and all their children under controversial Hikinaakalā in Hauola.

In 1915, Leimomi Manner, my aunty; her mama was born there, right on the grounds, Kalona Pia. When we take ownership of this property, our *tūtū* was the one who steward that place. He lived right on the edge...the water's edge of Hikinaakalā. When you hear the word "*kapu*," we say *kapu* is "keep off." *Kapu* was not keep off for our family because that is where our family was raised. That is where my mama guys learned how to swim. Our *kūpuna* would gather on those areas there. It was inclusive. I just want to apologize to Tommy because I am the one you helped, if he is here. I work hand-in-hand with Tommy. I am Hōkūalele Canoe Club of Anahola. He has helped me out quite a bit. We do the mountain bike racing in Anahola to (4) four team cracks. If I say anything to offend Tommy, I just want to apologize in advanced.

When you folks go and select people for cultural purposes to support the project, you folks came up with a name, Aunty Lafrance Kapaka. You folks also came up with a name who was my *kumu* as well, Pōhaku Nishimitsu. You guys did not take into consideration, and I do not mean you folks personally, but the people who are actually doing this process, Section 106, and others, Kēhaulani Kekua. She

was an expert who demonstrated the opposition to this property and to make the bike path go through at Wailua area. To say that they did this legally is one thing, "that it was not illegal." But for us, it is immoral. I hear everybody talk about the *kūpuna*, the *'uhane*. We stand before you today as the people from them. I do not think I ever saw one family that came forward that could show their genealogy, in quote, "the way we did." I reserve my time for my Auntie.

LEIMOMI MANNER: Someone stated earlier. 1925, it is history. I was very offended because my mom was born in 1915 on that *heiau* in the front there. She was ten (10) years old, 1925. This would make her history. I am part of her. She was born there because her grandfather was a steward of the place. He took care of the *heiau*, of what my niece said was true about being inclusive. It was not *kapu* to keep people out. It was an open...we *hānai*, we take in. We do not know how to host people but we do know how to *hānai*. We need a place to stay. We are the...that hotel is built. It is built on part of the *heiau* that was very significant because it was a *heiau* that was used as a refuge. If you had any crime, or if you did any crime, you went over there and did your time until you was free to get back out in society if you cleared yourself. I am winging it, so excuse me.

Ms. Yokotake: I am just going to say this. We are very sketchy of Section 106. I will be right up front. Our family was sought out. I went to the first three (3) meetings. For us, it was *pohō* because we went in there and the attitude was basically "just a process. This needed to happen because..." We are very sketchy because we were the same family that the controversial bridge over Hanamā'ulu that affected our family. The same *kupuna*, Wahinealoha Keo, is buried there. So where those arches come down into Hanamā'ulu, that is our family. That is our family, *iwi kupuna*, that lay right on that hill side. We had my mom's brother, Keoki Pia, that went ballistic up there. They promised him everything and nothing turned out but we had these buffers that were promised to be placed upon our family burial. That was what he was fighting for because where they were going to pile-drive, that was where it would hit right into our family burial area. I apologize if I...

Chair Furfaro: That is fine. You can go ahead and summarize.

Ms. Yokotake: It is just that we are so sketchy of the process. It seems like everything is all set up and set in place. We just have to *kūkākūkā* with them and take minutes and just say, "All done." I really do not know what I am asking of you folks aside from the fact that to recognize that we are totally against this, totally against anything going through that area there. With that, I just want to say *mahalo* for the opportunity to share.

Ms. Manner: Thank you.

Chair Furfaro: Thank you very much, Sherri, for sharing with us. Obviously, it is very good for all of us to reflect back on the *kapu* system. It is about being good stewards, it not about trespassing. It is about taking care of fishing areas and when you harvest *ti* leaf. All of that is really about sustainability. We appreciate that comment and your reference back to the various years that there were many *po'o* for that area and I just want to say thank you very much.

Ms. Yokotake: If I could just add one more thing to that. My *kupuna* really was the steward. If you go back into the (Land Commission

Award) L.C.A. awards, he was the one. He started off in the Halele'a District, went to Wailua, and his final area was in Hanamā'ulu. So if you click on Ulukau, and you look under Hanamā'ulu and you read the testimonies, you will see Keo. You will see Wahinealoha. That is referencing my *kūpuna*. He was like the "Robin Hood" of that era. What he would do...and there was a lot of them who were upset with him because he would rebound their lands when they went and tried to apply, because families would take big tracts of land, and he would go in there and survey himself, personally. If you said you wanted fifteen (15) acres and he saw a family with only two (2), he would 'aihue from that fifteen (15), give to that one with two (2) and make it for everyone, fairness. He is very much recorded in our Hawaiian History as being like the Robin Hood.

Chair Furfaro:
Mr. Rapozo.

Thank you very much for sharing that.

Mr. Rapozo: Thank you. There is no need to apologize for anything that you said here because I think it is important to have that ability to talk. I was very offended as well by comments made such as...we have been doing this for a long time and it is just time to move forward. I was especially moved by your testimony and your Aunt's testimony today. Very powerful. Mr. Kaleiohi, he was earlier here this morning. Very powerful. How do we ignore that testimony? I think about it like if I was in some Native American populist in the mainland. Who am I to go and trample on their native grounds? I think if you ask anybody here today that testified, and even the ones in support of this, and you put that scenario that forward, would you trample on Native American ground? I think the answer would be a clear "no." But it seems some people on this island think it is okay on the Hawaiian's ground. That bothers me. I think that what we heard from you today...I guess my question is how much participation did you and your 'ohana, your family, have in that process? I agree with you that 106 is a process. It is a checkmark that needs to be done. Do we really use the 106 process to get to the reality of what that land is all about? I do not think so. It is a checkmark to qualify for some permit or some funding. But how much involvement did you and your family actually have? It sounds like you are clearly connected to that area.

Ms. Yokotake: Yes. Honestly, we did three (3). We only did three (3). It was my Uncle, John Pia, and I that went. We were very discouraged because it seemed like the mind was made up, and we were just there as a process that they had to follow through. So we were doing things upon deaf ears, really.

Mr. Rapozo: I have to assume that what you told us today was told to the people that were conducting the 106 process?

Ms. Yokotake: Correct.

Mr. Rapozo: And that information was provided?

Ms. Yokotake: Yes.

Mr. Rapozo: I keep hearing various arguments about whether or not that is a burial ground. We heard straight from someone's mouth here a while back that he participated in moving grave sites to the area. There is no dispute or doubt in my mind that that area is a sacred burial ground. I am sure. What is the response? What do they tell you, these 106 people? Is it just ignored?

Ms. Yokotake: They shake their heads, tears. That is about it. Apologize. That is about all that they did.

Mr. Rapozo: Thank you again for your testimony. Aunty, thank you again for coming. I guess I am flabbergasted. I do not know what else to say. Sometimes I just wonder why...and I hope the Administration is watching. I know that Mr. Rapozo was here earlier. I do not know if they are watching this on the closed circuit, but I hope they are watching this because it is, in my opinion, very important. This Council, although we do not have the ability to tell them stop, we do have the ability to stop future funding if they do not do what we ask them to do and what we are asking them to do. I am only speaking for myself. It is really what the people want. We have got tons of emails. I think the fact that we have discussed this for a long time and when the permits were requested years ago. Things change. New information is obtained. We cannot just commit and say because we said we are going to do it, we have to move forward. That is totally disrespectful of this culture and I am with you. I am not apologizing for that because I do not think it is something we need to apologize for. We are trying to preserve our host culture here. Thank you very much for your testimony. Thank you, Mr. Chair.

Ms. Yokotake: Thank you.

Chair Furfaro: Okay. Councilmember Yukimura.

Ms. Yukimura: Sherri, thank you. Your testimony was and your Aunty's, very moving. Your preference would be to not have a path go through that segment?

Ms. Yokotake: Yes.

Ms. Yukimura: That is your feeling?

Ms. Yokotake: Yes.

Ms. Yukimura: Thank you.

Chair Furfaro: Other members? Councilmember Nakamura.

Ms. Nakamura: Can I just follow-up on that question. Thank you again for your testimony. I had no idea that there are stewards of that area that live today. I just was not aware. I wanted to ask you, to follow-up on Councilmember Yukimura's question, is what I heard today three (3) different scenarios. One is to move it where the Administration wants to put it. The other one was behind Coco Palms on that old cane haul road. Then the third option was to work within the paved right-of-way that the State owns, to not go onto the sand but go to the paved right-of-way and somehow reconfigure the lanes. I was just wondering your thoughts about the last two (2) options.

Ms. Yokotake: Well, I am not an expert. I do not say that in a sarcastic way. I only say from us to be careful even on the Coco Palms side, because we often wonder why our *kupuna*, Wahinealoha Keo, had this authority. When we did our genealogy, his sister was Wahineho'okano. Wahineho'okano, her other name was Debra Kapule. Debra Kapule had presence in the Wailua area. We

all know that where we live is where we bury and stuff like that. To tell you if that would be an option, I cannot. I do not know the significance of the area back there. All I can say is anything to do with the beach, anything to do with going over and associating with that area across, Hauola and Hikinaakalā, no. Nothing to do with on the *makai* side. I do not want anything, any boardwalks, nothing.

Chair Furfaro:

Mr. Rapozo.

Mr. Rapozo: Thank you, Mr. Chair. I think not talking about behind Coco Palms or in front of Coco Palms or *makai*, but in the existing roadway right now, inside the wall, if they demarked an area for the bike path to go through. That is what I think Councilmember Nakamura is asking.

Ms. Yokotake:

Yes, I would say.

Mr. Rapozo: I guess the question to you is... and I know you are not the expert, but I think you are as close to an expert as far as cultural that we are going to have today, is that the disturbance that would be created would not increase from what is already there...

Ms. Yokotake:

Then is already there, I would say.

Mr. Rapozo:

Thank you.

Chair Furfaro: Thank you very much, Sherri, and to your family and stewardship at Ala Kukui, as well as Hikinaakalā. It is very much appreciated in the community. Thank you. I am sorry, Mr. Chang.

Mr. Chang: I have a fast question. Sherri, thank you for coming and thank you for coming back along with your Aunty. You mentioned your Uncle, or Robin Hood. You said look up L.A.C. or L.C.A.?

Ms. Yokotake:
they did the Māhele.

L.C.A., the Land Commission Awards when

Mr. Chang:

Okay. Thank you.

Chair Furfaro:

Mr. Kuali'i.

Mr. Kuali'i: I do not have a question. I just wanted to say *mahalo* and I think that just the experience of you being here today was very powerful and very moving, and I am glad that you are my sister from Anahola. *Mahalo.*

Chair Furfaro: I think our last speaker was called earlier. I think it is Mr. Joe Rosa. Mr. Rosa, you are our last speaker for today, then we are going to take a caption break. Mr. Rosa, I am just going to give you six (6) minutes right through, okay?

JOE ROSA: Good afternoon Members of the Council. For the record, Joe Rosa. I was here earlier but I had to leave, I had a meeting with the Mayor. I got over so I just took a chance to see if this meeting was still going on. Thank God, it is. First thing first is from what I see and what I heard, some of the things the Council is leaving themselves open for liabilities and what not. One of

the things I heard the gentlemen from O'ahu say is that the Special Management Area (S.M.A.) was nearly four (4) years old. How can the County go ahead and go against the S.M.A. when they had a problem recently with Sheehan from Hanalei. By doing what you intend to do by going on with that bike path without a new S.M.A., you are opening a can of worms. What is good for the goose is good for the gander. It does not give the County special privileges in the S.M.A. The things that I am hearing are the destroying of the shoreline, which is against S.M.A., or removal of trees or shrubbery within the shoreline. That is against the S.M.A. How can you do that? The S.M.A. laws were made for the public and the government. That is what they make the rules for. Why is it that they still insist on going ahead and destroying the shoreline and take away the valuable sand that the tourists come to Hawai'i to see, a sandy beach. They do not want to see a concrete slab. Let us be realistic and follow the rules and regulations. Make sure that they have a new S.M.A. and check with the Department of Land and Resources (D.L.N.R.) because I had a talk with the Highway District Engineer, and he said that it seems like D.L.N.R. does not know what is going on. He, himself says they made an exchange from the *makai* side to the *mauka* side, they exchanged the old railroad bed that is in Coco Palms. That was not even used as a haul cane road. Neither the one in the back of Coco Palms. The road in the back of Coco Palms, that is a State road that is used to maintain the canal in the back of Coco Palms there. It has not and was not a haul cane road. Let us get it straight. From the start, I told Dough Haigh, "What are his plans?" Again, he talks about those plans and those slabs and columns to put it. The slabs are ten (10) feet wide, I heard it mentioned, and ten (10) inches thick. One of those slabs are roughly 4,000-plus pounds. That means it is a two (2) ton slab. How are you going to remove it? You are going to need a crane. How many of those slabs do you need? How many of those columns do you need? Where are the facts? Where are the figures? Where are the plans? We do not want another Honolulu Stadium where they say it is going to be rust proof and maintenance proof, and then there is a liability for the County as far as expenses.

I told Bernard at the meeting where I just came from before I left, I told him, "tell Mr. Doug Haigh to come up with plans and figures. You cannot go into something blind." I said, "on those slabs, you are going to have heat expansion joints, roughly about two (2) inches. A bike tire can go between that. There is all that to consider. Talk is cheap. Liability is costly. People can talk and talk but get the plans." I worked 36 years with the Department of Transportation (D.O.T.). I was a drafts man and we had to get plans for jobs to come out so that they could bid and put estimates and costs on it, not the way Mr. Doug Haigh is doing business, without a plan. You guys cannot even see what it is going to look like. It is going to be a column with a shaft going in? That is the kind of things that I told Bernard, that this Department has to be more technical when it comes to money. It is easy to say, sure they want it done. Take care of the costs. We taxpayers cannot be paying something that is going to be costly continuously. Like I say, I do not hear anybody talk about plans. They do not talk about the seat expansion joints that is all involved and part of construction. When it comes to concrete, you have to have heat expansion. Every bridge has heat expansion joints. It is a common thing that pops up that is what you feel, all the bumps from the joints. Those are the kind of things that is lacking. It is just, "ready, aim, fire!" Then they find out there are all kinds of problems. You do not need that. The planning has to be done first. Get your plans out. I have not seen one roll of plans here yet. Those are the things. Along this shoreline, where they are going to talk about it, that road was built in the '30s by the W.P.A. It was a make work thing that President Roosevelt made when there was The Depression along with the C.C.C. The W.P.A. along the shoreline was (inaudible) with one of the stones that was on the *heiau* of the Wailua River mouth.

I got that from City workers who used to work with D.O.T. They worked on it during their days. When Mr. Louis Rego dug it out for the sewer line, afterwards, he got ill.

Chair Furfaro:
you quickly summarize.

Joe, your six (6) minutes has expired, so can

Mr. Rosa: Okay. That is what I had to say. I would like to see if Mr. Doug Haigh is listening in some office, to have some plans to present to anyone of you to show you what it is and what it is going to look like. Like I say, another expense, you are going to need a crane to lift it up. You are going to need a (inaudible) trailer to haul it away. You are going to need a base yard to store it. There are a lot of things here. I told him from the start, six (6) years ago, he is a dreamer and you cannot stop dreamers but that is being unrealistic. Money is involved. I saw in an article, "Money being wasted by way of duplication." Nobody has ever told me that I did not make a good statement. They all thank me, but I have nothing to gain. I am for the people. That is why I see money being wasted by way of duplication. I told Ray McCormick, I will solve this...

Chair Furfaro:

I need you to summarize.

Mr. Rosa: Okay. I am going to summarize right now. I told Ray McCormick to solve this thing here and work with D.O.T., tell them to widen up the existing one that you have, go down the eight (8) inches, fill it up with asphalt treated base and you could dig 2,000 feet a day and fill it up that afternoon and continue and you will save the County big money than be spending what we are spending out there. (Inaudible). Thank you.

Chair Furfaro: Thank you, Joe. We have no questions? There are no questions, Joe. Thank you very much for your history and your expertise.

Mr. Rosa:

Thank you. Have a good evening.

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: I would like to call the meeting back to order and members, what I would like to do is I would like to go into a ten (10) minute recess. We can have dialogue when we come back. Al, I would like to share with you and expect some correspondence from the Council to find out what would exactly happen to any improvements along the beach there as far as protecting the dollar value of this investment because if anything happens, we can apply to them for reimbursement. I would like to send something over about how we account for this asset in lost prevention. On that note, Members, I would like to take a ten (10) minutes recess. We will be back to discuss amongst ourselves.

There being no objections, the meeting was recessed at 4:31 p.m.

There being no objections, the meeting was called back to order at 4:44 p.m., and proceeded as follows:

Chair Furfaro: I am going to ask members to submit to Yvette a number of questions they might have for a future session on this particular subject matter. The reason I am asking you to do that, and I would like you to do it before this Friday, is because I might break the agenda item up into a couple of items. For example, I would like to, and, Yvette, can you make note of this, I would like to have a little discussion and presentation on how we now deal with subject matter 106 process. What is the structure that we have in place, and I would like to have dialogue directly with the County Attorney's Office, myself, on that item. I understand that we have a system in place for particular reviews and some participators, so leave 106 out of the frame at this moment until I can have some time to get briefed by the current process by the County Attorney's Office. Any other questions I am asking you to pose to Yvette, and then we will so structure it into one (1) or two (2) agenda items. I would like them to have that done before noon this Friday. This item for today – the motion was to receive, it was only an update. We do not have any approvals for it but is there anymore dialogue? I would still like to receive this item depending on the sense of the questions, we would structure a new communication.

Mr. Rapozo: I appreciate getting this on the agenda because I think the public needs to know what is going on. We have an influx of concern from the community. I do not think – I have received maybe one (1) E-mail in support of this project. Just a couple of questions that I will be sending over, Mr. Chair. As I stated earlier, I wanted to see the copies of the SMA permit for this project, more specifically this area and any amendments or extensions, as well as the justification for us to construct or start construction to build inside of a shoreline setback, which I believe a minimum of forty (40) feet right now. Also, the itemize cost of the removal of the existing wall and the construction of the new barriers. Something for the County Attorney's is what exposure does this bring to the County should the erosion or a natural disaster take out the road, the highway? How protected are we because of our construction on the shoreline of this project. What does that do as far as exposure to liability as far as the damage? The other concerns, again, I plan to pursue the SMA angle, I do not see how our SMA permit can be extended for this long, especially on a shoreline project because of the changes in the conditions. Obviously, erosion has taken a lot of that beach away, and we do see some restoration. But if you read... and I do not know how else to read Ruby Pap's memo. I think it can be spun however you want, but it is pretty clear what she said, is that if we decide to build or any infrastructure site close to the beach in this area would cause management problems. That starts off her discussion and then she goes into some possible options – raise wooden boardwalk and we all know that a wooden boardwalk with the wooden boards do not meet ADA standards. We cannot get a wheelchair on those things. That is out of the question for here in Hawai'i. You can have elevated walkways, but I think the purpose of the boardwalk, as she explains it, is that it can withstand the surges of the ocean so you do not have to be removing four thousand (4,000) or five thousand (5,000) pound panels with a crane every time we get threatened with a tsunami or hurricane. I am still not clear on how this temporary ten (10) foot or twelve (12) foot wide or panels or cement will be moved. Where would they move it from? Not the highway. They would probably have to get onto the beach. I am not sure. That is why we had asked for the Parks Director. I guess he left, so he is not here but we can have that discussion at a later time. This whole thing really comes down to...and I appreciate the reading of Chip Fletcher's statement because that is what I remember Chip Fletcher saying, and I know that as well has been spun several times and several ways that Chip Fletcher supports it. But Chip Fletcher and I said this before...he is a hired gun; he is a consultant. He will say what you are paying him to say, but the

2009 statements that was made was Chip Fletcher's statement. In fact, from early on when he was trying to work with the County to do the erosion study, it was very clear what his priorities and his philosophy was – no structures on the coast. The hundred foot (100) was the minimum. We should not be putting anything, and over the years, he has evolved his philosophy to say, "well, if it is worth the investment and if there is a public purpose, then, yes, it is well worth it because it will last five (5), six (6), seven (7) years before it gets washed out." Well, if the public uses it, it might be a worthwhile investment. That is a big change from his earlier comments that was read today by Judy Dalton. In fact, at one (1) point in his career he was very clear, at least a hundred (100) feet from any structures from the shore. I would be very interested to have him here as well. Besides all of that, the testimony from Mr. Kaleiohi and Ms. Cummings (inaudible), I think that should be the primary focus of the discussion. Erosion and all of that, yes, that is...I mean, I think those are the tangible impacts, but when you look at the intangible, cultural impact, the fact that there are people here that have a direct link to the ancestors that are buried there, to basically ignore that and say, "do not worry, there are not too many," or "we did not find any," basically telling the people like Sherri, we do not believe you. Sherri that was a nice, sad story you said, but we just do not believe you. That is how I take it. That is frustrating to me where there are many other alternatives. I do not agree with the one behind Coco Palms either because I believe that there are some very important connections there as well, so I do not support that. To me, the simple solution is...in the military when you go to war, there are things called "limiting factors." It is some things that you got to deal with that you are not going get, you are not going have access to clean water, so you got to bring water. You might not have access to tents or hotels, so you got to bring cots and sleeping bags. There is limiting factors that we know. If you look at the Wailua stretch – that should be a limiting factor. We know we cannot go on the beach. So, what is it going to be? Well, we may have to restrict the path to a narrower path. We may have to require bicycles to walk it across, if you want that kind of activity. There are many other options, but our Administration is not interested in those options. They want the big path – the multiuse path. Well, maybe in some areas on this island, we cannot, like Kūhiō Highway. Some places you cannot go because get mountain, so you turn your car around and you drive the other way. That is a limiting factor. Unfortunately, that is one (1) of the beautiful things of living on an island. Let us do what is right, let us do what is pono. We all talk about that during our campaigns, "pono." Well, let us do the right thing, and I hope the Mayor is getting the message and not just from us but from the public, and I am sure he is. There is a win-win, in my opinion, if we stay within the existing framework on that highway and just utilize that right edge heading north, the right edge inside the existing wall as the pathway for the bicycles. I just hope they get that message, Mr. Chair.

Chair Furfaro: I will express my intentions again that I want to break this down. I want to deal with the questions as to permitting in planning tied into being able to have our Sea Grant people present when they get back from this holiday to reflect on their October 8 and November 2 correspondence. That should be one (1) posting, and then another posting dealing with, more or less, the questions on construction and compliance with ADA. And we want to have these things in those two (2) categories. Any further discussion?

Mr. Chang: Thank you for placing this on the agenda. I just want to say that I did have some communication yesterday, and I just wanted to redirect this conversation back to the huge, high, wide sand that is underneath the bridge. It seems when we...when the construction and the completion of the

Mayor Bryan J. Baptiste, "Aloha begins with Me Bridge," I do not know if that bridge or that widening had done anything and around that area. The width of that river looks so wide. If you have a chance when you go over the bridge, it looks extremely wide. That it is going to the furthest part of the bush to the furthest parts of the banks of the docks across the street. What I was told as early as Monday was a lot of that water was backing up into the areas behind Coco Palms, even up toward the Wailua Houselot side that borders the backside of Coco Palms. I would like to send a communication that somebody can take a look about what is going on upstream. Eventually, if we do not get the rain and just a small rain...not the rain enough to bust open the river mount, I think it would do good. I do not know what the protocol is but to open up or try to assist the sand, because I hope eventually, in terms of the erosion, that the sand can work its way back to the northern Wailua Beach and maybe that sand, hopefully through nature, will filter its way back into Lydgate Pond. I ask people to take the opportunity to walk along the beaches. Again, there is a big difference, as we discuss the two (2) foot high tide and the minus tide, as far as the way you would see what the contour of the beach is, but I am glad that we had this discussion, because it seemed sadly we have had erosion on different parts of the island. Many more of these beaches replenish itself fast like on the North Shore, for example, Hanalei Bat. Anyway, I am glad that we did have this discussion. The one thing that I want to say from hearing what I am hearing, if that stretch of beach does not have to be considered a multiuse path, I still do believe that it would be healthy to have some sort of (inaudible) that people can actually walk. As Vice Chair Yukimura...I think anybody that has been there, there is no path to walk. When we have two (2) man canoe races that go from Keālia to Wailua, Wailua to Hanamā'ulu, Hanamā'ulu to Kalapaka, there really is no place to park and no place to walk also. A lot of aloha out from Wailua and there is a lot of history in Wailua, and I do believe that we need to respect the community, and what the Hawaiian community has been expressing to us today. Thank you, Chairman.

Chair Furfaro: Members, on that note, I would like to go ahead and receive this, and we might break it up in a couple of items going forward, especially on the permitting and the Sea Grant narrative when they are back from vacation. Any more comments?

Ms. Yukimura: I want to start off by saying thank you to Sherri and Auntie Leimomi for coming. It was a real revelation to hear about the cultural roots and stewardship that happened on the beach for generations. On the issue on erosion, I feel like the matter is a matter of a few feet in finding a solution. On the matter of the cultural aspects, Sherri had said if we stayed in the right-of-way, not the right-of-way but just for the highway pavement area, that it could work. There are some real issues of safety. I do not believe we can narrow those car lanes. But I think we need to keep working on this to see how we might somehow come up with a solution. One solution is to reduce – remove one car lane one-way or another, and cars cause global warming which causes the erosion. It is a real cycle there and one of our goals, and we are going to look at the Multi-Modal Plan, is to reduce our vehicle miles traveled which is mainly car traffic. I wondered if there was also a way to look at restoration of the heiau. I do not even know the dimension and to really honor it as a cultural site as part of the planning process. That is just a seed of an idea but maybe some thought can go into it because it would enrich proper restoration, and the families would have to say how it should be done. It might really enrich people's experience of that area and tie things together historically and culturally. These are just some ideas that have come out of this tremendous testimony that we received. I want to say that on all sides of the

issue, I feel like there are really sincere, hardworking people who want to do good for the community. My hope is that we can keep working at this to find a solution. It is going to take a lot of creativity and goodwill but maybe we can do it on Kaua'i, and we should try at least until we think we cannot go any further.

Mr. Kualii: I am thankful that you were able to put this on the agenda, and we were able to hear from so many people from the community. I am actually surprised that we heard so much from so many. It was very inspiring and educational as well. I especially want to thank Sherri and Auntie Leimomi. I want to read a couple of sentences from one of the last documents from OHA in regards to this. It says, "OHA cannot overestimate the sacredness or significance in encompassing this entire Wailua complex for which even Kūhiō Highway itself, in some respect, is a blemish (inaudible) and practicality dissecting the richly kapu landscape." It also says that OHA is recommending that the County is also encouraged to engage in ongoing consultations with the Native Hawaiian and Hawaiian community at-large and establish greater consensus. OHA is wanting to ensure that other agencies on the State and County levels uphold their constitutionally, statutorily, and judicially mandated obligations to the Native Hawaiian and Hawaiian people. I just want to say that when Sherri talked about the 106 process and not being happy with it and saying that it was just a process, and it did not feel like...it did not really engage and bring in all of the appropriate, cultural experts – the people that have the knowledge and experience and that even when it was to some degree that it was not...and somebody else testified earlier, too, about how it was just in the minutes somewhere. It is like thank you for sharing that, but it did not really become part of the final plan. I think that there is still...we are close, and there is still some possibility for making sure that people like Sherri and Auntie Leimomi and other Native Hawaiians who still have concerns and still not happy, we can get to that place where at least...because I do believe that like I was telling Thomas Noyes the path is something that ultimately if it is done right, everyone can support, because it is creating a lot of opportunity for people to be out in the environment. We need to make sure that the process to involve community and the public, especially the Native Hawaiian community is more pono. I think that what you said, if it is done in the right way. Some things with government, sometimes because it takes so long and you get frustrated and you are just trying to get it done, you do half of what you should do. You are not following through all the way, and you are like...one thing I noticed somewhere was that a cultural impact assessment was not done. It was decided that it did not need to be done because one was already done nearby when the Kapa'a Bypass was done. To me, that is not the same area, and I am sure Sherri would tell you that this was their *kuleana*; this is what they knew. Yes, they did an archeological inventory survey, but they did not do a cultural impact assessment, and they did not do a thorough effective 106 process. I think that is the biggest failure to not truly have the full buy-in of all Native Hawaiians, especially the ones most closely tied to the *kuleana* of the area. If it takes another six (6) months to a year, do it. It is going to be here forever. Yes, some people are frustrated, but if it just takes a little while longer to improve it and to not have some people totally unhappy and discouraged, and hurt for the rest of their lives every time they go by this place which is supposed to be a good, positive for everybody.

The motion to receive C 2012-448 for the record with future postings and with the new narrative was then put, and unanimously carried.

Chair Furfaro: Please record 7:0 to receive and know that we are going to break this down into a couple implements for future posting. Thank

you everyone who was here for this, and we will break this down into construction and ADA compliance, as well as with permitting and planning. Thank you. Again, to remind the audience, we have to go into Executive Session on the following items and then come back out for the public posting. The items are C 2012-446, C 2012-447 and C 2012-449. If you are involved in any of those, we do have to go into Executive Session first. If not, we will go to the top of page two (2) where there is a communication, C 2012-444.

C 2012-444 Communication (10/31/2012) from the Director of Parks & Recreation, requesting Council approval to accept a donation from residents John and Elizabeth von Krusenstiern in the amount of \$1,500.00 for the Kalāheo Neighborhood Center Youth Sports Programs: Mr. Kualii moved to approve C 2012-444 with a thank-you letter, seconded by Ms. Nakamura, and unanimously carried.

C 2012-445 Communication (11/05/2012) from the Housing Director, requesting Council approval to decline the County's option to repurchase Unit No. 708, Ho'okena at Puhi, located at 2080 Manawalea Street, Līhu'e, Hawai'i, 96766, and to grant the owner a one-year waiver of the buyback and allow the market sale of the unit: Mr. Chang moved to approve C 2012-445, seconded by Mr. Bynum, and unanimously carried.

There being no objections, C 2012-385 was taken out of order.

LEGAL DOCUMENTS:

C 2012-385 Communication (08/28/2012) from the Civil Defense Manager, recommending Council approval of the second amendment to the five (5) year license agreement between the County of Kaua'i and Bank of Hawai'i, Trustee of the Kukuilono Park Trust Estate, extending the County's license for the 800 MHz radio site located at Kukuilono Park in Kalāheo, Kaua'i, Hawai'i, for emergency radio communications for the County of Kaua'i, which license fee will be paid in incremental increases of three percent (3%) each year for the five (5) year period commencing July 1, 2012.

- Second Amendment of License Agreement

Mr. Bynum moved to defer C 2012-385, seconded by Mr. Chang, and unanimously carried.

CLAIMS:

C 2012-450 Communication (11/13/2012) from the Deputy County Clerk, transmitting a claim filed against the County of Kaua'i by Enterprise Rent-A-Car for property damage, pursuant to Section 23.06, Charter of the County of Kaua'i: Mr. Kualii moved to refer C 2012-450 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Mr. Chang, and unanimously carried.

C 2012-451 Communication (11/16/2012) from the Deputy County Clerk, transmitting a claim filed against the County of Kaua'i by Joy Buccat for property damage, pursuant to Section 23.06, Charter of the County of Kaua'i: Mr. Kualii moved to refer C 2012-451 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Mr. Chang, and unanimously carried.

COMMITTEE REPORTS:**PLANNING COMMITTEE REPORTS:**

A report (No. CR-PL 2012-10) submitted by the Planning Committee, recommending that the following be approved on second and final reading:

“Bill No. 2453 A BILL FOR AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 14, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE PUBLIC ACCESS, OPEN SPACE, AND NATURAL RESOURCES PRESERVATION FUND,”

Mr. Rapozo moved for approval of the report, seconded by Mr. Chang, and unanimously carried. (See later for Bill No. 2453)

Ms Nakamura was noted as recused from this item.

A report (No. CR-PL 2012-11) submitted by the Planning Committee, recommending that the following be approved as amended on second and final reading:

“Bill No. 2451 A BILL FOR AN ORDINANCE AMENDING ZONING CONDITIONS IN ORDINANCE NO. PM-175-88, RELATING TO ZONING DESIGNATION IN PRINCEVILLE, KAUAI (Princeville SC Development, LLC, Applicant),”

Mr. Rapozo moved for approval of the report, seconded by Mr. Chang, and unanimously carried.

FINANCE / PARKS & RECREATION / PUBLIC WORKS PROGRAMS COMMITTEE REPORTS:

A report (No. CR-FPP 2012-13) submitted by the Finance / Parks & Recreation / Public Works Programs Committee, recommending that the following be received for the record:

“FPP 2012-08 Communication (10/12/2012) from the Council Chair, requesting the presence of the Director of Parks & Recreation, to provide an update and timeline relating to the relocation of the Temporary Maintenance Facility and Office Trailers at the Wailua Golf Course,”

Mr. Rapozo moved for approval of the report, seconded by Mr. Chang, and unanimously carried.

A report (No. CR-FPP 2012-14) submitted by the Finance / Parks & Recreation / Public Works Programs Committee, recommending that the following be approved on second and final reading:

“Bill No. 2452 AN ORDINANCE ADDING A NEW SECTION TO ARTICLE 1, CHAPTER 19 OF THE KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO PARKS AND RECREATION (Prohibiting Fishing at Lydgate Beach Park Pond),”

Mr. Rapozo moved for approval of the report, seconded by Mr. Chang, and unanimously carried. (See later for Bill No. 2452)

RESOLUTIONS:

Resolution No. 2012-55, RESOLUTION ESTABLISHING NO
PARKING AT ANY TIME ALONG PORTIONS OF PO'IPU ROAD IN THE KŌLOA
DISTRICT

Chair Furfaro:

We had a request to defer.

Mr. Rapozo:
can get some discussion.

Mr. Chair, before we do the deferral – if we

Chair Furfaro:
Yukimura first.

Sure, let me recognize Council Vice Chair

Ms. Yukimura:
not just a simple deferral to another but until Public Works come back to us.

Chair Furfaro:
right?

I think they gave us a date in their letter,

Mr. Kualii:

December 19th.

Chair Furfaro:

Let us read their letter.

Ms. Yukimura:
the motion.

Okay, just so we know that when we make

Mr. Watanabe:
from this week's meeting until we can complete our research. So it is pending completion.

They just ask that the deferral of the item

Chair Furfaro:

It is until they complete their research.

Ms. Yukimura:
convene a meeting of stakeholders in the Po'ipū area because I think part of the problem is transportation-related problem. Part of the Multi-Modal Plan is...I do not remember the time table but a Kōloa-Po'ipū shuttle and an analysis of how much of that parking is employee parking, how much is Po'ipū-based traffic from one hotel to another, et cetera. It is somewhat open-ended, and I hoped to convene a meeting in December, but I got a report back and the time would be in January. I have been in contact with the County Engineer, Larry Dill, and will coordinate with him. I am looking at a possible return to the agenda sometime in early January.

Chair Furfaro:
after having a discussion from everything from car makes of employees, to guests, to shuttle issues, park and rides, and so forth.

I wish you luck to get back in early January

Ms. Yukimura:

It is complex.

Chair Furfaro:

You did mean next year, right?

Ms. Yukimura:

I do.

Mr. Rapozo: I spoke with the Police Department this morning and requested they do a safety study. They are going to be working with the State as well as the County Highway Department. In fact they have a training tomorrow with the equipment that actually do the measurements, so they will be using one of these junctions as one of the demos. Anyway, I think Kōloa Community Association already submitted their testimony and I think they share the concerns that I brought up a few weeks ago where they are in agreement that "No Parking," the County should consider "No Parking" only in the area necessary so that there is a proper site distance for oncoming traffic. I have asked the Department to figure out what is the safe distance in that area, and more than likely we will be able to amend the Resolution to just that area. He told me two (2) weeks was going to be sufficient. He will be working with Public Works as well as State Highways. I hate to defer it pending their response because we are never going to get it back. If we could do a date-specific deferral of a month or even six (6) weeks – whatever it is. I do not want this to hang in there like so many of our issues. I think a month is sufficient.

Chair Furfaro: You are referencing a time in a month that we only have two (2) meetings, so will you be okay with early January? Okay. I think there is a message here. There is a site issue that Mr. Rapozo...because they are parking right up to the entrance, and perhaps if there is no parking three (3) cars deep, it improves the site plan. We will wait for the report from the Police Department. Councilmember Yukimura wants to initiate a stakeholders meeting, so we will defer to the first Council Meeting in January.

Mr. Bynum: I just want to comment briefly. That will probably be an easy consensus about limiting the "No Parking" to the safety issues and not going to the entire stretch. I think that is what Mr. Goodwin is suggesting in his written testimony. I also want to comment on something else Mr. Goodwin gave us which was this picture of him parking near the Hyatt in the County right-of-way, not near any site lines and getting a request...this little ticket on the window from the Hyatt saying, "please do not park in the County right-of-way and go park in our neighbor's." I just find that really inappropriate. If they want a "No Parking" zone there in the County easement, because Mr. Rapozo has pointed out that we do have those easements, there are plenty of places where the parking is appropriate and intended. I cannot imagine Hyatt saying please do not park in this County easement here, go park down the street. I just wanted to make that comment.

Mr. Bynum moved to defer Resolution No. 2012-55 until the first Council Meeting in January 2013, seconded by Mr. Rapozo, and unanimously carried.

Resolution No. 2012-59, RESOLUTION RELATING TO THE ACQUISITION OF A PUBLIC ACCESS EASEMENT TO PAPA'A BAY

Mr. Watanabe: We have five (5) registered speakers, but I do not believe all of them are present.

Chair Furfaro: We have five (5) interested speakers. Read the names out and we will see if they are present.

Mr. Watanabe:

Peter Waldau.

Chair Furfaro: No.

Mr. Watanabe: Kaulani Edens.

Chair Furfaro: No.

(Inaudible.)

Chair Furfaro: I started something because we had a student that had to go back to school, this is not the practice of the Council...

(Inaudible.)

Chair Furfaro: If you want to submit her written testimony that would be fine, very good.

Mr. Watanabe: Hope Kallai.

Chair Furfaro: Hope Kallai. It looks like I was given testimony dealing with the Wideman Estate for the Molokaʻa Hui Lands. I believe that came from Hope Kallai.

Mr. Watanabe: So noted. We have Tim Kallai and last registered speaker, we have Felecia Cowden.

Chair Furfaro: I am going to ask you and maybe for the purposes of having the facts in front of us, if we can get to the members this print-out document.

Mr. Bynum: Its thousands of pages.

Chair Furfaro: Just for next time we get together, the document is two hundred and twenty (220) pages, which was not printed, and I would ask that we get it printed for distribution, not for this meeting but for reference.

Ms. Yukimura: Because Ms. Cowden signed up, did you want to speak?

Chair Furfaro: Who is this?

Ms. Yukimura: Felicia.

Chair Furfaro: Yes, I plan to go to the speakers. Hope was the next speaker, and she is not here but she left me this whole document, and I want to share it with all of you folks. Oh, did we all get a PowerPoint? Were you aware of that? Now, it looks like we all got a PowerPoint. Let the record reflect everyone got testimony by way of PowerPoint.

Ms. Yukimura: And a map.

Chair Furfaro: And a single-page map.

Ms. Yukimura: Right.

Mr. Watanabe:

So noted.

Chair Furfaro: Felicia Cowden, you have the floor. Felicia, I hope you understand I do not want to start a precedent when people just come to write testimony and somebody is going to come in and start reading for them. We did upgrade our website, and there is a way to contact all members. The fact of the matter is the purpose of having the testimony is to have testimony given in front of us or with the consent calendar.

There being no objections, the rules were suspended to take public testimony.

Ms. Cowden:

I have no issue.

Chair Furfaro:

Thank you.

Ms. Cowden: I was just trying to help her. I will be brief because I have looked all through Hope Kallai's presentation. I know Kauiolani. I was thinking I would be a follow-up to some rather powerful testimony that has quite a lot of detail, and I would just summarize pretty quickly on Hope's – a piece of it that is very important to me is on how...when things go to Court, she illustrates when the homeowners who took the County to Court over that property did it in Federal Court, a lot of Hawaiian history was not included, and Hope goes through quite a bit of good detail, is inaccurate information was part of what was the public record and Court record. That becomes something that goes on in perpetuity. I am not a regular user of Pāpa'a Bay. I have been down there when Duke Wellington used to take care of it, and I got to ride horse and help with the cattle. That was fun and that was my experience with it. I am really just backing up how important it is and how much I appreciate the County Council. I want to compliment you on your competence and your caring has demonstrated today and many other days of actually representing the citizens. What I feel like is happening all around the island with these beach access issues, even to the Feds taking over areas calling them wildlife preservation, is that we are regularly blocked. Everything that happens is precedent setting. I will not distract by going to other beaches, but this is profound and it is continuing. Even in my very close area in Kilauea, you will see all the same behavior patterns happening with the high-end landowners and it just becomes...part of the strategy to endure a fine for blocking access to the beach, what we are saying is the utilization of planting plants barriers so people cannot make it. Also, the destruction of trees to make it very difficult to get into different areas because the ocean then takes away those places, and I have even seen backhoes go in and cutting away land. I cannot think of...heartbreaking does not feel like strong enough of a word. I honor the Kupuna and the Hawaiians who have spoken already. I know I am new to the island. I have only live here since 1984. But for all of us, we care about the beach. We care about being able to get down to places, and it feels really wrong to just simply be in playground of the rich when they are not even there. I really encourage whatever you can do to help set a rightful precedent to allow people to access the beach. Pāpa'a Bay – we will leave it to others hopefully in the future to bring forward the deep facts, but they are compelling.

Chair Furfaro: Thank you, Felicia. As we go through this item, I am going to ask Mr. Jung to come up. We want to hear a little bit about the earlier understanding we had about one of the accesses there and what was settled, and then we are going to go into the other option that is in front of us.

Ms. Cowden: Okay.

Chair Furfaro: Again, I hope you understand, I do not want to start a precedent where I have people coming in and speaking for other people that are given the opportunity. They all have the opportunity to send us their testimony through the website and so forth. I hope you understand that.

Ms. Cowden: I wrote it down and I am sure your staff will get it to you.

Chair Furfaro: I see that now, we have it.

IAN JUNG, Deputy County Attorney: Good evening, Council Chair and Councilmembers, Deputy County Attorney Ian Jung.

Chair Furfaro: Mr. Jung, I want to make sure that we understand that the last opportunity that we had to meet and in reviewing the old agreements, I want to understand what happened to the access on the south side of the Bay at what I thought was the connecting of two (2) easements and the settlement of approximately fifty thousand (50,000.00) was given to the County of Kaua'i. I understand that that was deposited in the General Fund account, but I was of the impression even though that is a surfer, fishermen access along a rugged shoreline, why was there no action taken when we had the potential of acquiring that connection?

Mr. Jung: To go back a little bit, I think there was an issue from 1999 SMA minor permit where Peter Goober, who was the owner of the Mandalay properties. They issued an easement along what is referred to as the east bank of the rock way or the boulders of Pāpa'a Bay...

Chair Furfaro: Let us call it the surfer and fishermen access.

Mr. Jung: So there is a connection there through the Goober property. And as part of the 'Aliomanu Beach Estates Subdivision, there was a road right-of-way going down a parking lot. On the far right of the parking lot, there was a diagonal easement that went down to an area referred to as (inaudible) surf spot.

Chair Furfaro: And what you are referring to as the parking lot is a County-approved parking lot that was negotiated through Planning.

Mr. Jung: Correct, as an exaction on the subdivision.

Chair Furfaro: Yes.

Mr. Jung: Because it was a subdivision greater than six (6) lots, we were able to acquire an access through that action. Following that exaction, there was some discussion about going after the connecting piece that is referred to by several people as the missing link between the Goober property and lot twelve (12) which connected up to the current...I think it is easement P3, so there was going to be a connector easement. It took some time to try to figure where this easement came from and whatnot, but there was a resolution that came down. And the fellow that owned the property was a fellow named Norman Carris,

and there was some litigation threatened that the County was looking at possibly doing some condemnation action. At the end of the day what happened was over the Carris property, there was an easement P13 that was then recorded and granted over to the County. There is currently that connecting missing piece but there was no money expended by the County. That fifty thousand dollars (\$50,000.00) remained in the General Fund and potentially lapsed according to the Finance Director.

Chair Furfaro: So when I go that route to surf, I am legal?

Mr. Jung: You are legal but if you do want to check out the maps, you can go ahead and ask Planning Department to get full map or we can make it available to you guys.

Chair Furfaro: Okay, I am going to ask you to make that request because the last set of maps that I got two (2) weeks ago, it did not show the recorded easement.

Mr. Jung: Right.

Chair Furfaro: And I would like...

Mr. Jung: And that was just brought to my attention as well because I was trying to piece together through the litigation.

Chair Furfaro: May I make that request of your office to work with Planning in getting us that document?

Mr. Jung: I have it here with me.

Chair Furfaro: Outstanding. May I ask staff...

Mr. Jung: The map is very small, so we can try to figure out a way to blow up that map to the original documentation.

Chair Furfaro: I will have our staff do that. Thank you for pursuing that at my request. I was concerned that perhaps the money was put in to the General Fund and the work...to work with that homeowner just kind of fell on the wayside from the maps that I have. Thank you very much, it is now recorded that we do have that one access.

Mr. Jung: Correct, Chair.

Chair Furfaro: Thank you.

Mr. Bynum: Just to clarify for anybody that is watching this because Council Chair Furfaro bought this up the last time, currently the way to get to Pāpa'a Bay is to go through the adjacent beach, 'Aliomanu. In 'Aliomanu Estates, there is a beach access, one (1) goes straight down to 'Aliomanu Beach. What Council Chair Furfaro is referring to as a practice was people were traversing along the coastline along the beach to get to the point where there is a fishing spot, and then if you choose to, you can go through these boulders to get to Pāpa'a Bay, right? We did record that easement, so it is legal to go straight down to the beach or to go left on that trail to get to the point area, correct?

Mr. Jung:

Correct.

Mr. Bynum: Thank you for clarifying that because that was my memory that we had gone through that issue and have resolved it. I am glad to hear you confirmed that we have. In regards to the Resolution, this is somewhat tangential issue because the resolution says and I did a full presentation here at Committee and I do not intend to repeat that unless it is necessary but basically we have undisputed right to a road that goes into Pāpa'a Bay and comes within six hundred (600) feet. The access encourages the Access, Open Space Commission to use their new-found authority and the expertise of yourself and the County Attorney's Office to explore getting an access from near the end of that road to the sandy beach, a safe access that is level. That is really what the resolution encourages the Open Space Commission to move forward with this other way to obtain an access. I will just do that summary rather than do a whole presentation.

Chair Furfaro: Thank you for that clarification, Mr. Bynum, but may I ask the County Attorney a question?

Mr. Bynum:

Sure.

Chair Furfaro: This particular undisputed access to the road that is an affirmation from you?

Mr. Jung: I would not say it is undisputed because the way the Court ruled in the Federal Court case, that there was not enough evidence to establish County or State jurisdiction. That there was an establish roadway prior to 1892, so whether it is an open question or not, there is a lot legal issues that we have to...that would pop up in terms of identifying the exact road and the connector from the end of where the road is at six hundred twenty-seven (627) feet, or whatever reported assertion is, down to the shoreline. That would be an open question of which maybe bared by certain legal theories.

Chair Furfaro: I am going to give the floor back to Mr. Bynum. I just wanted to make sure we get some clarity on that question.

Mr. Bynum: I think your answer may have confused some. There physically is a road that goes down into Pāpa'a Bay and the dispute was whether it went all the way to the beach.

Mr. Jung:

Correct.

Mr. Bynum: There is a line called the (inaudible) reservation. The County argued legally that the road went all the way. We lost that. The resolution says we lost that. What I am saying is undisputed is that the road up to that point is the County road, that is undisputed, correct?

Mr. Jung: As far as the briefs have been outlined and the Court ruled, the issue the Court ruled on...and I have not looked into what the former Deputy County Attorney Mike Matsukawa had researched on that issue of that road. The Court issued that where the road reportedly ends to the beach, there was not enough evidence. If it is a County road and there was a finding of fact in the actual Court hearings, then I will not disturb that.

Mr. Bynum: All I am saying is the road that goes down there, nobody is saying that is not a County...to that line, right? You can drive

down it today. I drove down it. I talked to the landowner or the landowner's representative who said, "yes, you are on the County road."

Mr. Jung: And I was with you, and without fear of trespassing.

Mr. Bynum: I do not think the current landowner is... it is that last section that is in question, correct?

Mr. Jung: Correct.

Mr. Bynum: And this Resolution says from the area where we know we have access, find a way to access the beach and to even consider condemning an easement. That is what the resolution says. We are currently pursuing condemning an easement on the south shore, correct?

Mr. Jung: On the south shore, Kaua'i?

Mr. Bynum: Yes.

Mr. Jung: Yes, certainly. Eminent domain is certainly a possibility.

Chair Furfaro: Let me follow up on that. It took me a little while to make sure we got our first easement well documented. What action has the County Attorney's Office taken to make sure there are documents and notice that implies that this road is not in limbo; this road is a County road. What has the County Attorney's Office done to document that?

Mr. Jung: Me personally, I have not done it.

Chair Furfaro: Are you part of the office?

Mr. Jung: I am part of the office.

Chair Furfaro: Okay, what has the office done? Can you tell me?

Mr. Jung: They are trying to track the records from this particular case. There is about thirteen (13) banker boxes worth of material. It is all in Laserfiche, so we are trying to search through certain documents. It does take some time. What I did was I looked up the disposition of the case, the settlement discussion, which was reduced to writing and from just the letter to the appellate mediator at the Federal Division. From what we gather, the settlement was each side was going to drop their respective appeals and we would be... issue fifty thousand dollars (\$50,000.00) to pursue other access and to look into preserving other beach accesses. If it is a next step – that particular order did not necessarily rule out eminent domain, so you can still move forward with looking for eminent domain but that would be up to this Body in a future resolution if the Open Space Commission brings it up to this Body as a recommendation.

Chair Furfaro: Let me clarify the question one more time. That road that turns around and ends on the spot showing this insert, what do we

have that actually says there is an understanding between us and the property owner that that in fact is a County road?

Mr. Jung: I have not seen any documents that suggest that and I can go certainly research that, if you would like.

Chair Furfaro: Fair enough. I will send that query over because what I am so worried about is if you take the road down to 'Anini from up at Pu'u Poa and there is nothing recorded but everyone says it is a road in limbo. Before I know it, the State sells the road. And then they are saying to us that it is their road, and we just went through this in Kōloa with...

Mr. Jung: Hapa Road.

Mr. Bynum: Hapa Trail.

Chair Furfaro: Hapa Road – one minute it is ours, the next minute they have the ownership. We need something that says... after Mr. Bynum is gone, after Furfaro is gone, and so forth. We actually got something that says, "yes, that is your road"?

Mr. Jung: Historically we have gotten things in the past where the State has said "yes, it is your property in fee simple, but it turns out there is a TCT or transfer certificate of title on the property which vested with the State, so roads in limbo is very difficult to identify. The true disposition of who the real property owner is – that is why I am hesitant to give a full affirmation on what type of road that is, but we do know that it is an old government road.

Chair Furfaro: You do know what I am asking for, though?

Mr. Jung: Correct.

Chair Furfaro: And the reason for it?

Mr. Jung: Right.

Chair Furfaro: Okay.

Mr. Rapozo: Ian, help me understand that fifty thousand dollars (\$50,000.00)... the landowner through the arbitration and negotiation agreed to give the County fifty thousand dollars (\$50,000.00) to seek other public access?

Mr. Jung: Well, it could have been one (1) of two (2) things. One (1) it could have been used to acquire the so-called missing link and that term was the term in the settlement letter. The missing link, from what I gather in talking with some of the people that were involved in the past on it, was to connect the Goober easement that goes down along the rocks that traverses up to the top over this next lot twelve (12), which was previously owned by a fellow name Norman Carries. The missing link was to connect that easement to the already established easement that is on the far right side or eastern south side of lot twelve (12), which our County parking lot is at, at the end of the 'Aliomanu Beach.

Mr. Rapozo: Who gave the County fifty thousand dollars (\$50,000.00)?

Mr. Jung: The fifty thousand dollars (\$50,000.00) check was from National Chicago Title Insurance. The Title Insurance Company from Peter Goobers.

Mr. Rapozo: Goober paid the fifty thousand (50,000.00)?

Mr. Jung: Through their Title Insurance.

Mr. Rapozo: Yes, but it was his property (inaudible) in negotiations or mediation. They are representing him? The money came from...

Mr. Jung: Well, the County had sued Mandalay Property. Then they, in turn, sued the County. Then it was a Federal (inaudible) jurisdiction question, which then moved the cases up to Federal Court. The Federal Court made a ruling and then there was a new renewed motion for summary judgment, so there was a lot of litigation. Then ultimately the Court ruled on the motion to summary judgment in favor of Mandalay Properties and then the County has appealed it, or was looking at appealing it, and then at the point of appeal to another case. There was discussion through an appellate-mediation type program. That is how it was resolved. So the County agreed not to file an appeal, and then the result of that agreement was the fifty thousand dollar (\$50,000.00) check to look at connecting the missing link or other beach access in the area.

Mr. Rapozo: And the missing was... we did that?

Mr. Jung: The missing link was done...

Mr. Rapozo: I remember that – it was about two (2) years ago.

Mr. Jung: 2008.

Mr. Rapozo: Oh, that long ago. So this resolution, as we are considering condemnation on this access which... whose property is that – Carris property or Goober property?

Mr. Jung: Carris property.

Mr. Rapozo: So, it is not tied with the Goober?

Mr. Jung: It was lot twelve (12) of the 'Aliomanu Beach Estates property.

Mr. Rapozo: Got it.

Chair Furfaro: Further questions for the County Attorney? Obviously, we take a position on this easement that eventually gets us down to the beach, you can see how important the other question about the road is.

Mr. Jung: I will be in contact with the State on that as well.

Mr. Bynum: If we approve this resolution today, these are all issues that the Open Space Commission can work in their due diligence, is that correct?

Mr. Jung: As I read the resolution, it just basically request that the Open Space Commission look into alternative access down there.

Mr. Bynum: Thank you.

Chair Furfaro: Thank you. Any further questions? No. Does anybody want to give testimony?

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Bynum moved to approve Resolution No. 2012-59, seconded by Mr. Chang.

Ms. Yukimura: I want to thank Councilmember Bynum for introducing this Resolution. It is so clear in all the testimony we received today and before today that public access is a really critical issue to the people of Kaua'i. This is a treasured place, and it is very important that we keep pursuing the issue of public access, so of course I am happy to support this Resolution. I look forward to achieving appropriate and proper access to the beach. Thank you.

Chair Furfaro: I want to make note to the staff, since everyone has the DVD on the testimony, no need to copy the two hundred somewhat pages. I did not realize that everybody had a copy at that time.

The motion to adopt Resolution No. 2012-59 was then put, and carried by the following vote 7:0 (*Chair Furfaro – silent*):

FOR ADOPTION:	Bynum, Chang, Kualii, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Chair Furfaro: Silent vote goes with the majority. I hope you all can understand my concern. I want to get the clarity on the roads. On that note, this passes as 7:0.

Mr. Bynum: Thank you.

Chair Furfaro: I hope you understand my concerns.

Mr. Bynum: I do and I think...

Chair Furfaro: I do not want to get the left leg and lose the right leg.

Resolution No. 2012-61 RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE FIRE COMMISSION

Chair Furfaro:
doing an interview.

We have to defer this for the purpose of

Ms. Yukimura moved to defer Resolution No. 2012-61 pending the interview on December 12, 2012, seconded by Mr. Kuali'i, and unanimously carried.

BILLS FOR SECOND READING:

Bill No. 2453 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 14, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE PUBLIC ACCESS, OPEN SPACE, AND NATURAL RESOURCES PRESERVATION FUND: Mr. Bynum moved for adoption Bill No. 2453, on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Mr. Chang, and carried by the following vote:

FOR ADOPTION:	Bynum, Chang, Kuali'i, Nakamura,	
	Rapoza, Yukimura, Furfaro	TOTAL – 7,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Bill No. 2452 – AN ORDINANCE ADDING A NEW SECTION TO ARTICLE 1, CHAPTER 19 OF THE KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO PARKS AND RECREATION (Prohibiting Fishing at Lydgate Beach Park Pond): Mr. Bynum moved for adoption Bill No. 2452, on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Ms. Yukimura.

Mr. Kuali'i: I have an amendment but I think I might hold that amendment and try to convince you to defer this item until you get more information.

Chair Furfaro: I too have been looking at this item that deals with...

Mr. Kuali'i: We just had some experience today with cultural people who have *kuleana* for the area and it leads me to think that... unless we... I know we have not discussed this with Native Hawaiians who may have *kuleana* in the area that we should not move forward. The other part and it is my fault for not catching it sooner and asking it sooner is to get some *manao* from the Office of Hawaiian Affairs. I did send a request and they did give a brief explanation, and they did say they can give more information if they had a little bit more time. It is regarding Native Hawaiian gathering rights and things like that.

Chair Furfaro: But I do want to point out that the PASH gathering rights, there is a period of the collections of fishing in this particular area, every Hawaiian would have to right to prove their PASH rights to gathering and so forth and this "no fishing" would not exempt them from filing their PASH rights. It also implies that with PASH rights, they need to be consecutive rationale behind the gathering. The door is always open for those who live there of *kupuna* to record their rights. This does not prohibit that, but at the same time there are a number of years with "no fishing" signs in the existing area, so there could have been a break in the gathering, but it does not prevent from negotiating their gathering rights. That is a given.

Mr. Kuali'i: I did notice that, yes, there were the signs before, and I suppose the signs could just be put up again, and people that see the signs and respect the signs would be the majority. This brings back to me the whole thing about the smoking ban and courtesy and people are not fishing in the pond ninety-nine (99) out of a hundred (100), I am sure. The complaint that we have that brought this about, was not a complaint from fifty (50) people. We are reacting by creating a law to do a full on prohibition with fines of a hundred dollars (\$100) for the first time and up to five hundred dollars (\$500) for the third time for that rare occurrence that might happen. It might even happen by a Native Hawaiian at night who actually has the right to but because they did not get a special permit from the Director of Parks and Recreation. I think we are somewhat creating a problem where there really is not one, and I just think that before we do a full prohibition, we might hear back from OHA and then look at possibly focusing on fish as opposed to the opihi, and whatever, because there is no danger in someone being on the rocks collecting opihi while children are swimming in the pond. I think with a little bit more time, we could probably do better with this.

Chair Furfaro: I just want to make sure you understand that there is no intent here to interrupt any PASH gathering rights at all that exist – all they have to do is show their ancestral lineage as fishermen, collectors, and so forth. I do not have a problem with deferring this. Do you think you will hear in two (2) weeks from OHA?

Mr. Kuali'i: I am pretty sure we will. I think so.

Mr. Rapozo: I was not here at the last meeting, but do we even have jurisdiction in the water?

Mr. Kuali'i: We got an answer from DLNR that stated that there is... and I do not have it in front of me, but that there is an executive order that transfers control and management of Lydgate Pond from the State to the County. The control and management allows the County to enact regulations regarding activities to be conducted on the land under its controlled law.

Chair Furfaro: That is one of the reasons that DLNR said we needed to post the signage, but for two (2) weeks... Mr. Kuali'i, I want to make sure you understand there is no intention over here to deviate from our PASH rights, and I have no problem waiting two (2) weeks.

Mr. Kuali'i: I just wanted to have what you put in place for everyone to sort of not... because I think the average Hawaiian will see the "no fishing" signs and will respect that. They will not think about putting in place... invoking their PASH rights necessarily. If you look back when there was no gates and everyone would go *mauka* and hunt and everything... now the gates are all up and Native Hawaiians have rights to go but most of them will not go. They are just doing what everybody else does.

Chair Furfaro: Your point is well taken.

Mr. Kuali'i: And it is just, to me, about food as opposed to aquarium.

Chair Furfaro: There are also the other benefits – we have no fish ponds today that are really active with the *makaha*, the gate, places where children can go to understand the marine life...

Mr. Kualii: I will do what I can to get whatever information you folks could use in two (2) weeks.

Ms. Nakamura moved to defer Bill No. 2452, seconded by Mr. Kualii, and unanimously carried.

Chair Furfaro: May I have the County Attorney up.

There being no objections, the rules were suspended.

ALFRED B. CASTILLO, JR., County Attorney: Good evening Council Chair and Councilmembers, County Attorney Al Castillo. Council Chair, I am wondering on ES-588, I anticipate... and this is in relation to the agenda. Do you want me to read those also?

Chair Furfaro: 588 – this was the deferral that was expressed to us regarding Kukuilono Park.

Mr. Castillo: Yes, that is correct.

Chair Furfaro: We do not need to read that because it is understood that we are deferring that.

Mr. Castillo: Okay, thank you.

EXECUTIVE SESSION:

ES-585 Pursuant to Hawai'i Revised Statutes Sections 92-4, 92-5(a)(4), and Section 3.07(e) of the Kaua'i County Charter, the Office of the County Attorney requests an executive session with the Council to provide the Council with a briefing on the retention of special counsel to represent the County of Kaua'i in Ricky L. Ball vs. Kaua'i Lagoons Resort Company, Ltd., et al., Civil No. 12-1-0289 JKW (Fifth Circuit Court), and related matters. The briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-586 Pursuant to Hawai'i Revised Statutes Sections 92-4, 92-5(a)(4), and Section 3.07(e) of the Kaua'i County Charter, on behalf of the Council, the Office of the County Attorney requests an executive session with the Council to provide the Council with a briefing on the retention of special counsel to advise and represent the County Council in matters relating to the investigation of personnel matters involving the County Auditor's Office, and related matters. The briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-587 Pursuant to Hawai'i Revised Statutes Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), on behalf of the Council, the Office of the County Attorney requests an executive session with the Council to provide the Council with a briefing on Keālia Kealanani Makee and Kumukumu Subdivisions and related matters to address questions related to the purported security as a

mortgage. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

ES-589 Pursuant to Hawai'i Revised Statutes Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), on behalf of the Council, the Office of the County Attorney requests an executive session for Council to consult with the County Attorney regarding the Council's public release of the County Attorney's written legal opinion dated October 18, 2012, regarding Quality Control Standards for Solar Water Heating in the Building Code, and related matters. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: I want to vote first on ES-588 which is a request on the deferral.

ES-588 Pursuant to Hawai'i Revised Statutes Sections 92-4, 92-5(a)(4) and (6), and Kaua'i County Charter Section 3.07(e), the Office of the County Attorney, on behalf of the Council, requests an executive session to allow the Council to consult with the County Attorney regarding C 2012-385, Communication (08/28/2012) from the Civil Defense Manager, recommending Council approval for the second amendment, five (5) year lease agreement between the County of Kaua'i and Bank of Hawai'i, Trustee of the Kukuilono Park Trust Estate, which extends the lease of the County's 800 MHz radio site located at Kukuilono Park in Kalāheo, Kaua'i, Hawai'i, for emergency radio communications for the County of Kaua'i, for the five (5) year period commencing July 1, 2012, and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item: Ms. Yukimura moved to defer ES-588, seconded by Mr. Bynum, and unanimously carried.

Chair Furfaro: Now on the Executive Session items read by the County Attorney, I would like to have a motion to go into Executive Session.

Mr. Chang moved to convene in executive session for ES-585, ES-586, ES-587, and ES-589, seconded by Ms. Yukimura, and carried by the following vote:

FOR CONVENING IN EXECUTIVE SESSION: Bynum, Chang,	
Kuali'i, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL - 7,
AGAINST CONVENING IN EXECUTIVE SESSION: None	TOTAL - 0,
EXCUSED & NOT VOTING: None	TOTAL - 0,
RECUSED & NOT VOTING: None	TOTAL - 0.

There being no objections, the Council recessed at 6:08 p.m.

There being no objections, the meeting was called back to order at 6:58 p.m. and proceeded as follows:

Chair Furfaro: We are back from our Executive Sessions that deal with some action that need to take place in front of the public about our decisions. Let us take those three (3) items.

Mr. Sato: Council Chair, we are on page two (2) of the Council agenda, C 2012-446.

C 2012-446 Request (11/19/2012) from the Office of the County Attorney for authorization to expend funds up to \$25,000.00 to retain special counsel to represent the County of Kaua'i in Ricky L. Ball vs. Kaua'i Lagoons Resort Company, Ltd., et al., Civil No. 12-1-0289 JKW (Fifth Circuit Court), and related matters: Ms. Yukimura moved to approve C 2012-446, seconded by Mr. Chang, and carried by the following vote:

FOR APPROVAL:	Bynum, Chang, Kuali'i, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL - 7,
AGAINST APPROVAL:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0,
RECUSED & NOT VOTING:	None	TOTAL - 0.

C 2012-447 Communication (11/19/2012) from the Office of the County Attorney, on behalf of the Council, requesting approval to expend funds up to \$15,000.00 to retain special counsel to advise and represent the County Council in matters relating to the investigation of personnel matters involving the County Auditor's Office, and related matters: Ms. Yukimura moved to approve C 2012-447, seconded by Mr. Chang, and carried by the following vote:

FOR APPROVAL:	Bynum, Chang, Kuali'i, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL - 7,
AGAINST APPROVAL:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0,
RECUSED & NOT VOTING:	None	TOTAL - 0.

C 2012-449 Communication (11/21/2012) from Councilmember Yukimura, requesting Council approval for the public release of the County Attorney's opinion dated October 18, 2012 regarding Quality Control Standards for Solar Water Heating in the Building Code: Ms. Yukimura moved to approve C 2012-449, seconded by Mr. Chang.

Chair Furfaro: Councilmember Yukimura, any comments?

Ms. Yukimura: No. We have received it, so if there is no problem with releasing it, and it is important for us to have as we move forward to lobby before the legislature and work on some potential County Ordinance.

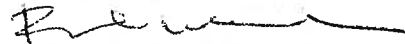
The motion to approve C 2012-449 was then put, and carried by the following vote:

FOR APPROVAL:	Bynum, Chang, Kualii, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Chair Furfaro: I believe our public business is completed at
7:00 p.m.
ADJOURNMENT.

There being on further business, the meeting was adjourned at 7:00 p.m.

Respectfully submitted,



RICKY WATANABE
County Clerk

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